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Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, on the relationship between children's rights and environmental protection.

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I. Introduction

1. After reviewing the activities of the Special Rapporteur in 2017, the present report focuses on the rights of children in relation to the environment, addressing the ways that environmental harm prevents children from enjoying their human rights and the obligations that States have to protect children from such harm.

2. The Special Rapporteur held an expert meeting and a public consultation on 17–18 October on "framework principles" on human rights and the environment, which are the subject of a separate report to the thirty-seventh session of the Council (A/HRC/37/59). He carried out two country visits, to Uruguay in April and to Mongolia in September, which are also the subject of separate reports (A/HRC/37/58/Add.1 and Add.2). He sent or joined in 27 communications to States regarding alleged violations of human rights obligations relating to the environment. He worked with the United Nations Environment Programme and other partners, including the Global Judicial Institute for the Environment, to conduct a regional workshop for judges on rights-based approaches to environmental issues, which was held in Brasília on 22–23 May. A regional workshop for Asian judges is expected to take place in Pakistan in February 2018.

3. In accordance with the encouragement of the Council in its resolution 28/11 to continue to contribute to and participate in, where appropriate, intergovernmental conferences and meetings relevant to the mandate, the Special Rapporteur spoke on 31 July to the negotiators of a regional agreement on implementation of principle 10 of the Rio Declaration on Environment and Development, on rights of information, participation and remedy. He presented a statement to the sixth meeting of the parties to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention) on 14 September, and on 4–5 December, he participated in the third session of the United Nations Environment Assembly, in Nairobi. He also spoke at the World Bank on 4 May, and at the Swedish International Development Cooperation Agency on 19 October.

4. The Special Rapporteur continues to draw attention to threats facing environmental defenders around the world. He participated in conferences on environmental defenders at the University of Oxford, in the United Kingdom of Great Britain and Northern Ireland, on 20–21 June and in Mexico City on 6 November. Together with the Universal Rights Group, he organized a meeting of environmental defenders in Bogotá on 8–9 November, at which the Spanish-language version of a web portal for environmental defenders, environment-rights.org, was launched. He also supported a new environmental rights initiative at the United Nations Environment Programme, which will, among other things, try to address threats facing individuals and groups working to protect the environment.

5. In preparation for the present report, the Special Rapporteur participated in the day of general discussion of the Committee on the Rights of the Child on children's rights and the environment, on 23 September 2016. He held an expert meeting and a public consultation on 22–23 June 2017, and sent a questionnaire to States and other interested stakeholders, which elicited over 40 responses. He also examined statements and reports of human rights mechanisms and international organizations, as well as other sources.

6. Section II of the present report reviews the increasing attention being paid to the relationship of the rights of children to environmental harm. Section III describes the severe effects of environmental harm on the rights of children. Section IV outlines the human rights obligations relating to children's rights in the environmental context. Section V addresses the relationship of future generations and children's rights. Section VI concludes with recommendations aimed at protecting the rights of children from environmental harm.

II. International attention to the relationship between children's rights and the environment

7. The international community has long recognized that environmental harm interferes with the full enjoyment of the rights of children. The Convention on the Rights of the Child, adopted in 1989, requires its parties to pursue full implementation of children's right to

health by taking measures, among others, to combat disease and malnutrition through "the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution" (art. 24 (2) (c)).

8. In the World Declaration on the Survival, Protection and Development of Children, adopted at the World Summit for Children in 1990, States recognized that millions of children suffer from environmental degradation, and committed to work for common measures for the protection of the environment, at all levels, so that all children can enjoy a safer and healthier future (see A/45/625, annex, paras. 5 and 20 (9)). The World Programme of Action for Youth to the Year 2000 and Beyond, adopted in 1995, includes specific environmental initiatives and states that implementation of the Programme of Action requires the full enjoyment by young people of all human rights and fundamental freedoms (see General Assembly resolution 50/81, annex, para. 20). States reiterated the importance of environmental protection in the document entitled "A world fit for children", adopted in 2002, one of whose ten principles and objectives is to "protect the Earth for children" (see General Assembly resolution S-27/2, annex, para. 7).

9. At the national level, many States reported to the Special Rapporteur that they have taken innovative steps to recognize and protect children's rights to live in a healthy environment. For example, the Plurinational State of Bolivia, El Salvador, Mexico and Paraguay have introduced national legislation that recognizes the right of children to a healthy, ecological and sustainable environment. Denmark, Saudi Arabia and Slovenia have adopted measures to protect children's health from environmental degradation and chemicals. Serbia is using the media to raise children's awareness about environmental issues, and Germany is promoting their participation in environmental initiatives. Many States, including Australia, Azerbaijan, El Salvador, France, Georgia, the State of Palestine, the Philippines and Switzerland, report that they have introduced measures to improve children's environmental education. Oman and Qatar have each designated a "national day of the environment" through which they raise awareness about the environment among children and promote children's participation in environmental activities.[1]

10. The Human Rights Council has often drawn attention to the effects of climate change on the rights of children. In its resolution 32/33, it recognized that children are among the most vulnerable to climate change, which may have a serious impact on their enjoyment of the highest attainable standard of physical and mental health, access to education, adequate food, adequate housing, safe drinking water and sanitation. In its resolution 35/20, it emphasized that climate change affects some children more than others, including children with disabilities, children on the move, children living in poverty, children separated from their families and indigenous children. In resolution 32/33, the Council called on States to continue and enhance international cooperation and assistance for adaptation measures to help developing countries, especially those that are particularly vulnerable to the adverse effects of climate change and persons in vulnerable situations, including children most at risk.

11. In recent years, human rights experts have begun to examine more closely the effect of environmental harm on the enjoyment of children's rights. In 2015, the United Nations Children's Fund (UNICEF) published a report on the effects of climate change on children.[2] In August 2016, the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Baskut Tuncak, issued a report describing the "silent pandemic" of disability and disease associated with childhood exposure to toxics and pollution, and explaining the obligations of States and the responsibilities of business enterprises to protect against such exposure (A/HRC/33/41). At the request of the Human Rights Council, the Office of the United Nations High Commissioner for Human Rights (OHCHR) issued a report in May 2017 on the relationship between climate change and the rights of the child (A/HRC/35/13).

[1] All of the submissions are available at www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/RepliesEnvironmentAndRightsChild.aspx.

[2] UNICEF, *Unless we act now: The impact of climate change on children* (November 2015).

12. The Committee on the Rights of the Child has also given increasing attention to the relationship of environmental protection and children's rights. The Committee often addresses environmental concerns in its review of country reports under the Convention.[3] At its day of general discussion on 23 September 2016, the Committee brought together over 250 participants, including children, representatives of Governments, civil society organizations, United Nations agencies and academics, to examine the effects of environmental harm on the rights of children, both directly and through aggravating underlying causes of serious violations through conflict over limited resources, increasing inequalities, forced migration and even early marriage.[4]

13. The Committee on the Rights of the Child, UNICEF, other special procedures, States and civil society organizations, among others, continue to study and clarify the relationship of children's rights and the environment. The Special Rapporteur hopes that the present report will contribute to that ongoing discussion by providing an overview of the principal effects of environmental harm on the rights of children and outlining the corresponding obligations of States.

III. The effects of environmental harm on the rights of children

14. This section describes first the effects of environmental harm on children's well-being, and then how those effects interfere with the enjoyment of their human rights, including their rights to life, health and development, to an adequate standard of living and to play and recreation.

A. The effects of environmental harm on children

15. Taken as a whole, no group is more vulnerable to environmental harm than children (persons under the age of 18), who make up 30 per cent of the world's population. Environmental harm has especially severe effects on children under the age of 5. Of the 5.9 million deaths of children under the age of 5 in 2015, the World Health Organization (WHO) estimates that more than one quarter — more than 1.5 million deaths — could have been prevented through the reduction of environmental risks.[5] In addition, one quarter of the total disease burden in children under the age of 5 is attributed to environmental exposures.[6] Childhood exposure to pollutants and other toxic substances also contributes to disabilities, diseases and premature mortality in adulthood.

1. Air pollution

16. Air pollution causes approximately 600,000 deaths of children under the age of 5 every year.[7] Countless more children suffer disease and disability, often with lifelong effects. Children are more susceptible to air pollution than adults for many reasons, including that their smaller respiratory airways are more easily blocked by infections, and that they breathe more quickly and take in more air per unit of body weight.[8] Because their

[3] The Special Rapporteur compiled statements of the Committee on the Rights of the Child on environmental issues in "Mapping human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: individual report on the United Nations Convention on the Rights of the Child" (December 2013). Available at http://srenvironment.org/mapping-report-2014-2/.

[4] Committee on the Rights of the Child, "Report of the 2016 day of general discussion: children's rights and the environment", p. 5. Available from www.ohchr.org/EN/HRBodies/CRC/Pages/Discussion2016.aspx.

[5] WHO, "Don't pollute my future! The impact of the environment on children's health" (Geneva, 2017), p. 1.

[6] Ibid., p. 22.

[7] Ibid., p. 3. Roughly 500,000 of these deaths are attributed to household air pollution and 100,000 to ambient air pollution. See UNICEF, *Clear the air for children: The impact of air pollution on children* (2016), p. 24.

[8] UNICEF, *Clear the air for children*, pp. 8 and 40.

immune systems are still developing, they are at higher risk of respiratory infections and have less ability to combat them.[9]

17. Ambient air pollution mainly results from factories and vehicles, and household air pollution comes primarily from the use of wood, coal and other solid fuels for cooking and heating. The vast majority of children — about 2 billion — live in areas that exceed the WHO ambient standard for particulate matter, and 300 million children live in areas whose ambient air pollution exceeds international standards by six times or more.[10] Over 1 billion children around the world live in homes that use solid fuels for cooking and heating.[11] WHO has estimated that together, ambient and household air pollution cause more than one half of all lower respiratory infections, such as pneumonia and bronchitis, in children under 5 in low- and middle-income countries, and that lower respiratory infections accounted for 15.5 per cent of deaths of all children under the age of 5 in 2015.[12]

18. Children who survive early exposure to air pollution can still suffer from it throughout their lives: it can disrupt their physical and cognitive development and make them more prone to lung cancer, asthma, other respiratory diseases and cardiovascular diseases.[13] The harm from air pollution begins before birth. As the Special Rapporteur on hazardous substances and wastes has said, children are often born "pre-polluted" because of their mothers' exposure to pollutants during pregnancy, which is associated with preterm delivery, lower birthweight and early fetal loss (see A/HRC/33/41, paras. 5 and 16).[14]

2. Water pollution

19. Water pollution resulting primarily from unsafe sanitation practices contributes to diarrhoeal diseases that cause more than 350,000 deaths a year of children under 5 years old, and another 80,000 deaths of children aged 5 to 14.[15] Water pollution also contributes to intestinal and parasitic infections such as schistosomiasis, which gravely affect the physical and cognitive development of children.[16] These infections, as well as diarrhoea, impair the proper functioning of the digestive system and prevent the absorption of nutrients essential for growth and development.[17] Lack of access to safe water also increases the incidence of other diseases, including trachoma, the main preventable cause of blindness.[18] More generally, unsafe water contributes to food insecurity, malnutrition and stunting of children.[19] UNICEF stated in 2013 that approximately 165 million children under 5 suffer from stunting as a result of inadequate nutrition and unhealthy water and sanitation.[20] Stunted children are not only shorter than they should be for their age; they suffer harm throughout their lives, including weaker immune systems and reduced brain development.

20. Children are particularly at risk from water pollution, like air pollution, because their bodies are still developing. In addition, they drink more water than adults in relation to their body weight, and they absorb a greater proportion of some waterborne chemicals.[21]

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[9] Ibid., pp. 9 and 40.

[10] Ibid., pp. 8 and 60.

[11] Ibid., p. 9.

[12] WHO, "Don't pollute my future!", pp. 2–3.

[13] UNICEF, *Clear the air for children*, pp. 29–32; WHO, "Don't pollute my future!", p. 8.

[14] See also UNICEF, *Clear the air for children*, pp. 8 and 43–44; WHO, *Inheriting a sustainable world? Atlas on children's health and the environment* (Geneva, 2017), p. 49.

[15] WHO, "Don't pollute my future!", pp. 3 and 13.

[16] Ibid., p. 5.

[17] WHO, *Inheriting a sustainable world?*, p. 25.

[18] WHO, *Preventing disease through healthy environments: A global assessment of the burden of disease from environmental risks* (Geneva, 2016), p. 22; WHO, *Inheriting a sustainable world?*, p. 26.

[19] WHO, "Don't pollute my future!", p. 6; WHO, *Inheriting a sustainable world?*, pp. 10–11.

[20] UNICEF, "Sustainable development starts and ends with safe, healthy and well-educated children" (May 2013), p. 8.

[21] WHO, *Inheriting a sustainable world?*, p. 25.

Children spend more time than adults playing in water bodies that are unclean, and they may be less able than adults to recognize or act upon environmental risks.[22]

21. Between 1990 and 2015, as the number of people without access to an improved source of water fell from over 2 billion to approximately 660 million, the number of diarrhoeal deaths of children under 5 years more than halved.[23] Some waterborne diseases, such as guinea worm, have been nearly eradicated. But much more remains to be done. At least one in every four people around the world still drinks water that is faecally contaminated.[24] Proper management of water sources is also critical to reducing vector-borne diseases such as malaria. Although the number of malarial deaths of children under 5 decreased by more than one half between 2000 and 2015, malaria still caused approximately 300,000 deaths in 2015, accounting for one in every ten child deaths in sub-Saharan Africa.[25]

3. Climate change

22. The Executive Director of UNICEF has stated that "there may be no greater, growing threat facing the world's children — and their children — than climate change".[26] As explained in the 2017 OHCHR report (A/HRC/35/13), climate change contributes to extreme weather events, water scarcity and food insecurity, air pollution and vector-borne and infectious diseases, all of which already have severe effects on children.

23. For example, climate change increases the frequency and severity of droughts, and approximately 160 million children already live in areas of high or extremely high drought severity.[27] Because children need to consume more food and water per unit of body weight than adults, they are more vulnerable to the deprivation of food and water, which can lead to irreversible stunting.[28] Water scarcity leads to the use of unsafe water, which in turn contributes to communicable diseases.[29]

24. Climate change also contributes to severe storms and flooding. More than 500 million children live in areas, mostly in Asia, that have extremely high likelihoods of flooding, and approximately 115 million live in zones of high or extremely high risk of tropical cyclones.[30] Beyond the immediate dangers of death and injury, severe storms and floods cause a cascade of additional harms, including compromising safe water supplies, damaging sanitation facilities and destroying housing. Like droughts, floods can cause massive displacement. Children are particularly vulnerable during displacements, when the loss of connections to families, communities and protective services can increase their vulnerability to abuses including child labour and trafficking.[31]

25. Climate change has many other harmful effects on human health, including increasing the frequency and severity of heatwaves, compounding the toxicity of fossil-fuel pollutants such as ozone and contributing to wildfires.[32] Children are, again, more vulnerable to all of these effects. For example, UNICEF has indicated that "infants and small children are more likely to die or suffer from heatstroke because they are unable or lack agency to regulate their body temperature and control their surrounding environment".[33] Over the longer term, rising temperatures and changing rainfall patterns are likely to exacerbate the spread of vector-borne diseases such as malaria, dengue and cholera,[34] and contribute to food scarcity and undernutrition. WHO estimates that by 2030,

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[22] Ibid., pp. 25–26.
[23] Ibid., p. 24.
[24] Ibid.
[25] Ibid., p. 38.
[26] UNICEF, *Unless we act now*, p. 6.
[27] Ibid., p. 22.
[28] Ibid.
[29] Ibid.
[30] Ibid., pp. 30 and 34.
[31] Ibid.
[32] Ibid., pp. 40 and 44.
[33] Ibid., p. 40.
[34] Ibid., pp. 48–52.

the effects of climate change on nutrition will result in an additional 7.5 million children who are moderately or severely stunted, and approximately 100,000 additional deaths.[35]

26. The ramifications of climate change for children go far beyond its effects on their health, as disastrous as those may be. As OHCHR has stated, "climate change heightens existing social and economic inequalities, intensifies poverty and reverses progress towards improvement in children's well-being" (see A/HRC/35/13, para. 50). To give just one example, climate change-induced food insecurity is already increasing the number of marriages of girl children, who are pressured to marry to reduce burdens on their families of origin.[36]

4. Chemicals, toxic substances and waste

27. The 2016 report of the Special Rapporteur on hazardous substances and wastes describes the harms to children from exposure to chemicals, toxic substances and waste. He states that the number of deaths from air and water pollution is only one part of a silent pandemic of disability and disease, much of which may not manifest for years or decades (see A/HRC/33/41, para. 4). The rapid growth of hazardous chemicals in the environment has occurred together with increasing incidence of cancer, diabetes and asthma, among other diseases. More than 800 chemicals have been identified as known or suspected disruptors of the normal functioning of human and/or animal endocrine systems, and humans are most sensitive to endocrine disruption during periods of development, including early childhood and puberty.[37] Children begin their exposure to toxic substances before birth; hundreds of hazardous chemicals have been found in children as a result of their mother's exposure, resulting in the children being born "pre-polluted" (see A/HRC/33/41, para. 5). He emphasizes that children in low-income, minority, indigenous and marginalized communities are at more risk, as exposure levels in such communities are often higher and are exacerbated by malnutrition, with the adverse effects inadequately monitored (ibid., para. 6).

28. Although the connection between exposure to a particular toxic substance and the harm to an individual is not always traceable, in large part because information about exposure to and effects of these substances is typically not required or provided, some effects are clear. For example, lead poisoning causes irreversible intellectual disabilities in 600,000 children annually (ibid., para. 9). Artisanal and small-scale mining, in which approximately 1 million children participate, commonly employs mercury, which causes lifelong harm to the developing nervous systems of children, as well as contributing to cardiovascular and other diseases.[38] Discarded mobile telephones and other electronic products are often shipped from high-income to lower-income countries. Children are often employed to extract valuable elements from these products, without protective equipment, exposing themselves to toxic substances such as lead, mercury, cadmium, chromium and arsenic.[39]

29. Another increasing source of harm is the use of pesticides, the subject of a recent joint report by the Special Rapporteur on hazardous substances and wastes and the Special Rapporteur on the right to food. They state that exposure to even low levels of pesticides, for example through wind drift or residues on food, may be very damaging to children's health, disrupting their mental and physiological growth and possibly leading to a lifetime of diseases and disorders (see A/HRC/34/48, para. 24). The effects of pesticides and of chemicals ingested other ways, including through food, may include asthma, cancer and neurological damage.[40]

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[35] WHO, *Quantitative risk assessment of the effects of climate change on selected causes of death, 2030s and 2050s* (Geneva, 2014), pp. 80 and 89.

[36] Gethin Chamberlain, "Why climate change is creating a new generation of child brides", *Guardian*, 26 November 2017; Human Rights Watch, "Marry before your house is swept away: child marriage in Bangladesh", 9 June 2015.

[37] WHO, "Don't pollute my future!", p. 6.

[38] WHO, *Inheriting a sustainable world?*, pp. 81–82.

[39] Ibid., p. 88.

[40] Ibid., pp. 67 and 72.

5. The loss of biodiversity and access to nature

30. Biological diversity (biodiversity) is necessary for healthy ecosystems, which in turn are necessary for the full enjoyment of human rights (see A/HRC/34/49). Although everyone in the world depends on ecosystems, some depend more directly than others. Indigenous peoples and traditional communities that rely on forests, fisheries and other natural ecosystems for their material subsistence and cultural life suffer disproportionately when those ecosystems are destroyed or degraded. More generally, decreasing biodiversity and the loss of access to the natural environment affect many children around the world. Interaction with microbial diversity is critical to the development of healthy immune systems,[41] and the loss of such microbial diversity is apparently causing autoimmune diseases, allergic disorders and other non-communicable inflammatory diseases to become more prevalent in all parts of the world.[42] Exposure to nature also has beneficial effects on mental health,[43] but many children, especially in urban settings, have little or no contact with the natural environment.

B. Environmental harm and the rights of children

31. Environmental harm interferes with the full enjoyment of a vast range of the rights of the child. This section focuses on the effects on children's rights to life, health, development, an adequate standard of living, play and recreation.[44]

1. Rights to life, health and development

32. The Human Rights Committee has stated that the right to life should not be interpreted narrowly, and that the protection of the right requires States to adopt positive measures, such as measures to reduce infant mortality and increase life expectancy.[45] The Convention on the Rights of the Child recognizes that every child has the inherent right to life and provides that States shall ensure to the maximum extent possible not only the survival, but also the development of the child (art. 6). The Convention also recognizes the right to the highest attainable standard of health (art. 24), as do the Constitution of WHO and the International Covenant on Economic, Social and Cultural Rights (art. 12).

33. A healthy environment is necessary for children's enjoyment of the rights to life, development and health.[46] The Convention on the Rights of the Child requires States parties to pursue full implementation of the right to health by appropriate measures that include the provision of nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution (art. 24 (2) (c)). As explained above, environmental harm causes the death of over 1 million children every year, most under the age of 5 years old. It also contributes to lifelong health problems, including asthma and other respiratory diseases, cardiovascular disease, cancer and neurological disorders. Climate change and the loss of biological diversity are long-term environmental crises that will affect children

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[41] Paul Sandifer, Ariana Sutton-Grier and Bethney Ward, "Exploring connections among nature, biodiversity, ecosystem services, and human health and well-being: opportunities to enhance health and biodiversity conservation", *Ecosystem Services*, vol. 12 (April 2015), pp. 1 and 7.

[42] WHO and Secretariat of the Convention on Biological Diversity, *Connecting Global Priorities: Biodiversity and Human Health — A State of Knowledge Review* (2015), p. 150.

[43] Sandifer, Sutton-Grier and Ward "Exploring connections", p. 3; see also Committee on the Rights of the Child, general comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts, para. 40.

[44] This is not an exhaustive list. The enjoyment of other rights, such as the rights to education and culture, are also implicated by climate change, natural disasters and other types of environmental harm. See, for example, A/HRC/35/13, para. 29. And the disproportionate effects on children already vulnerable for other reasons implicate obligations of non-discrimination, as explained below.

[45] See Human Rights Committee, general comment No. 6 (1982) on the right to life, para. 5.

[46] See Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health, para. 4; Committee on the Rights of the Child, general comment No. 7 (2005) on implementing child rights in early childhood, para. 10; general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, para. 2.

throughout their lives. There can be no doubt that environmental harm interferes with children's rights to life, health and development.

2. Right to an adequate standard of living

34. The Committee on Economic, Social and Cultural Rights has explained that the right to an adequate standard of living is intentionally expansive and that the Covenant includes a number of rights emanating from, and indispensable for, the realization of the right,[47] such as the rights to food, housing and safe and clean water and sanitation. The Convention on the Rights of the Child links the right to the development of children, recognizing the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development (art. 27).

35. Environmental degradation obviously interferes with the enjoyment of the rights to food, housing, water and sanitation, and to an adequate standard of living generally. The lack of clean air and water, the exposure to hazardous chemicals and waste, the effects of climate change and the loss of biodiversity not only prevent children from enjoying their rights today; by interfering with their normal development, environmental harm prevents them from enjoying their rights in the future, and often throughout their lives.

3. Rights to play and recreation

36. The Convention on the Rights of the Child recognizes the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts (art. 31). As the Committee on the Rights of the Child has explained, play and recreation are essential to the health and well-being of children and promote the development of creativity, imagination, self-confidence and self-efficacy, as well as physical, social, cognitive and emotional strength and skills.[48] In addition to being of intrinsic value to children, play and recreation are critical to development, facilitating children's capacities to negotiate, regain emotional balance, resolve conflicts and make decisions. Through their involvement in play and recreation, children learn by doing; they explore and experience the world around them; experiment with new ideas, roles and experiences and in so doing, learn to understand and construct their social position within the world.[49]

37. Opportunities for play and recreation depend upon access to a healthy and safe environment.[50] Many children, and the vast majority of children living in poverty, face hazardous conditions when they leave their homes, including polluted water, open waste sites, toxic substances and the lack of safe green spaces.[51] While children will seek out opportunities for play and recreation even in dangerous environments, children who cannot play outside without exposing themselves to such environmental harms cannot fully enjoy their right to play and recreation. Even when their immediate surroundings are safe, the millions of children who live in urban settings often lack access to natural environments.

IV. Human rights obligations relating to the protection of children from environmental harm

38. The human rights obligations of States in relation to the environment[52] apply with particular force to the rights of children, who are especially at risk from environmental harm and often unable to protect their own rights. Although these obligations arise from a wide variety of sources, the present report gives particular attention to the Convention on the Rights of the Child because of its focus on children and its near-universal acceptance by

[47] See Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water, para. 3.

[48] See Committee on the Rights of the Child, general comment No. 17, para. 9.

[49] Ibid.

[50] Ibid., para. 26.

[51] Ibid., para. 35.

[52] For a summary of the obligations, see the framework principles on human rights and the environment presented to the thirty-seventh session of the Council (A/HRC/37/59, annex).

States. The present section focuses on key educational and procedural obligations, including with respect to information, participation and remedy; substantive obligations, including the obligation to ensure that the best interests of children are a primary consideration; and obligations of non-discrimination.

A. Educational and procedural obligations

39. The obligations of States in relation to the environment include duties in relation to education and public awareness, to access to public information and assessment of proposed projects and policies, to expression, association and public participation in environmental decision-making and to remedies for harm (see A/HRC/37/59, annex, framework principles 5–10). These obligations have bases in civil and political rights, but they have been clarified and extended in the environmental context on the basis of the entire range of human rights threatened by environmental harm. Fulfilling these rights helps to ensure that, when possible, children have agency to influence environmental policy and protect themselves from environmental harm.

1. Obligations of environmental education

40. In the Convention on the Rights of the Child, States parties agreed that the education of the child shall be directed to, among other things, the development of respect for the natural environment (art. 29).[53] Environmental education should begin early in the child's educational process, reflect the child's culture, language and environmental situation, and increase the child's understanding of the relationship between humans and the environment (see A/HRC/37/59, annex, framework principle 6). It should help children appreciate and enjoy the world and strengthen their capacity to respond to environmental challenges, including by encouraging and facilitating direct experience with the natural environment.[54]

41. The Committee on the Rights of the Child has stated that in order to develop respect for the natural environment, education must link issues of environment and sustainable development with socioeconomic, sociocultural and demographic issues, and that such respect should be learned by children at home, in school and within the community, encompass both national and international problems, and actively involve children in local, regional or global environmental projects.[55] The Committee has also stressed that for educational curricula to reflect this and the other principles reflected in article 29 of the Convention, it is essential to have pre-service and in-service training for teachers and others involved in children's education.

2. Obligations of information and assessment

42. The Convention on the Rights of the Child states that the child's right to freedom of expression "shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice" (art. 13). The right to information is particularly important in relation to environmental issues. Public access to environmental information enables individuals to understand the effect of environmental harm on their rights, including their rights to life and health, and supports the exercise of other rights, such as rights to expression, participation and remedy.[56]

43. Access to environmental information has two dimensions: States should regularly collect, update and disseminate environmental information, and they should provide affordable, effective and timely access to environmental information held by public authorities (see A/HRC/37/59, annex, framework principle 7). In situations involving

[53] In addition, target 4.7 of the Sustainable Development Goals calls on States to ensure, by 2030, that "all learners acquire the knowledge and skills needed to promote sustainable development".

[54] Committee on the Rights of the Child, "Report of the 2016 day of general discussion", pp. 18–19.

[55] See Committee on the Rights of the Child, general comment No. 1 (2001) on the aims of education, para. 13.

[56] See Committee on the Rights of the Child, general comment No. 12 (2009) on the right of the child to be heard, para. 82.

imminent threat of environmental harm, either from natural or human causes, States must ensure that all information that would enable the public to take protective measures is disseminated immediately.

44. The 2016 day of general discussion held by the Committee on the Rights of the Child identified many gaps in information on the effects of environmental harm on children, including: a lack of robust data on actual exposure of children to various types of environmental harm in light of their vulnerabilities and real-life conditions; a lack of longitudinal data on the effects of environmental harm on children's health and development at different ages; a lack of disaggregated data on children most at risk; and a lack of information about the adverse effects of the loss of biodiversity and degradation of ecosystems.[57] In addition to these general gaps, the Special Rapporteur on hazardous substances and wastes has pointed out that information about health risks and possible sources of exposure is neither available nor accessible to parents and guardians for tens of thousands of substances manufactured and used by industries in food and consumer products, which often end up contaminating air and water (see A/HRC/33/41, para. 59). When information about the effects of particular chemicals or other substances is held by corporations, they often argue that it cannot be made public for reasons of confidentiality. Finally, when information about environmental effects is public, it is often available only in technical terms that are difficult or impossible for non-experts to understand.

45. Much more must be done to collect information about sources of environmental harm to children and to make it publicly available and accessible. The Committee on the Rights of the Child has stressed that information relevant to children should be provided in a manner appropriate to their age and capacities.[58] Because children are exposed to many environmental harms at young ages, or even before birth, information must also be made available to parents or other caretakers in forms that are easily accessible, understandable and relevant. For example, information about chemicals and other hazardous substances should focus not just on those that are the most commonly produced, but also on those that are most likely to affect children, and should include clear descriptions not only of the possible effects, but also of how children may be exposed to them.

46. Obligations concerning environmental information are closely related to the need for assessment of environmental impacts. To avoid undertaking or authorizing actions with environmental impacts that interfere with the full enjoyment of human rights, States should require the prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of the human rights of children (see A/HRC/37/59, annex, framework principle 8). While environmental impact assessment is now practised throughout the world, most assessment procedures do not address the rights of children, either by taking into account their greater vulnerability to harm or by providing for their participation. To ensure that the best interests of the child are a primary consideration in the development and implementation of policies and projects that may affect children, States should carry out "child-rights impact assessment", which examines the impacts on children of proposed measures and makes recommendations for alternatives and improvements. After implementation, authorities should evaluate the actual impact of the measure on children.[59]

3. Obligations to consider the views of children

47. The Convention on the Rights of the Child requires States parties to "assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child" (art. 12). The Committee on the Rights of the Child has called the right of children to be heard and be taken seriously, one of the

[57] Committee on the Rights of the Child, "Report of the 2016 day of general discussion", p. 16.

[58] See Committee on the Rights of the Child, general comment No. 12, para. 82.

[59] See Committee on the Rights of the Child, general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, para. 99; general comment No. 5 (2003) on general measures of implementation of the Convention, para. 45.

four general principles of the Convention, which should be considered in the interpretation and implementation of other rights.[60]

48. The Committee's point that the views of children may add relevant perspectives and experience is especially relevant with respect to environmental harm.[61] Children are not experts in air pollution, water management or toxicology, but neither are most adults. Once children have reached a certain level of maturity,[62] they are capable of forming opinions and expressing views on proposals for measures that may affect them. Moreover, like adults, they know better than anyone else the circumstances of their own lives. They can provide invaluable insights, for example, into their use of water sources outside the home; the effectiveness of warnings about environmental hazards; and their access to green spaces and natural ecosystems.[63] In particular, the views of children should be taken into account with respect to long-term environmental challenges, such as climate change and the loss of biodiversity, that will shape the world in which they will spend their lives.

49. The Committee has explained how to implement the participatory rights of children, including through children's hearings, children's parliaments, children-led organizations, children's unions or other representative bodies, discussions at school, social networking websites, and so forth.[64] It has made clear that all processes in which a child or children are heard and participate must be, among other things, voluntary, respectful and transparent, provide children with age-appropriate information, provide appropriate support to children according to their age and evolving capacities, and encourage the participation of marginalized children.[65]

50. States must protect children from risks of violence or other reprisals for participating in these processes or otherwise expressing their views on environmental matters. Adults who speak out on environmental issues are often at risk of harassment, violence and death.[66] Children are not exempt from such dangers. For example, the Special Rapporteur was concerned to learn that a 15-year-old girl was sued by a mining company for criminal defamation after she expressed her concerns that mining activities were causing water contamination that harmed her community.[67] Eventually, the charges against her were dismissed, but only after months of protests and litigation. The Committee on the Rights of the Child has urged States to ensure conditions for an active and vigilant civil society, refrain from interfering with independent organizations and facilitate their involvement.[68] With respect to child activists, in particular, States should make heightened efforts to ensure that they can express their views freely, without fear of retaliation.

4. Obligation to provide for effective remedies

51. The Universal Declaration of Human Rights (art. 8), the International Covenant on Civil and Political Rights (art. 2 (3)) and many other human rights instruments provide that States have obligations to provide for effective remedies for violations of human rights. Children are included in these protections. Although the Convention on the Rights of the

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[60] See Committee on the Rights of the Child, general comment No. 12, para. 2. The other three are the right to non-discrimination, the right to life and development, and the primary consideration of the best interests of the child.

[61] Ibid., para. 12.

[62] According to the Committee, maturity refers to the ability to understand and assess the implications of a particular matter, and must therefore be considered when determining the individual capacity of a child. Maturity is difficult to define; in the context of article 12, it is the capacity of a child to express her or his views on issues in a reasonable and independent manner. Ibid., para. 30.

[63] See, for example, Committee on the Rights of the Child, general comment No. 17, para. 19, which underlines the importance of involving children in the development of parks.

[64] See Committee on the Rights of the Child, general comment No. 14, para. 91.

[65] See Committee on the Rights of the Child, general comment No. 12, para. 134.

[66] See the report by the Special Rapporteur entitled "Environmental human rights defenders: a global crisis", at www.universal-rights.org. See also the report of the Special Rapporteur on the situation of human rights defenders, which focuses on environmental defenders (A/71/281).

[67] Prachatai, "Mine operator sues high school student for criminal defamation", 14 December 2015. Available at https://prachatai.com/english/node/5693.

[68] See Committee on the Rights of the Child, general comment No. 16, para. 84.

Child does not have an explicit provision on remedies, the requirement of effective remedies to redress violations is implicit in the Convention. To provide for effective remedies, States should ensure that individuals have access to judicial and administrative procedures that meet basic requirements, including that the procedures are impartial, independent, affordable, transparent and fair (see A/HRC/37/59, annex, framework principle 10). Decisions should be made public and promptly and effectively enforced. States should provide guidance about how to seek access to justice, and should help to overcome obstacles to access such as language, illiteracy, expense and distance.

52. Because children's dependent status creates obstacles to their pursuit of remedies, the Committee on the Rights of the Child has made clear that States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives. These should include the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance. Where rights are found to have been breached, there should be appropriate reparation, including compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration, as required by article 39.[69]

53. In the context of environmental harm, children may face additional barriers to access to justice. For example, they and their representatives may lack information about the effects of particular harms or the harms may manifest only years after exposure, which may make it difficult or impossible for those affected to have standing to bring a case, meet applicable limitations periods or carry their burdens of proof and persuasion.[70] States should take steps to overcome these obstacles, including by allowing collective suits (or "class actions") on behalf of children. Moreover, when determining the level or form of reparation, mechanisms should take into account that children can be more vulnerable to the effects of abuse of their rights than adults and that the effects can be irreversible and result in lifelong damage. They should also take into account the evolving nature of children's development and capacities and reparation should be timely to limit ongoing and future damage to the child or children affected; for example, if children are identified as victims of environmental pollution, immediate steps should be taken by all relevant parties to prevent further damage to the health and development of children and repair any damage done.[71]

54. Because environmental harm can cause irreversible effects, such as early mortality or lifelong disability, for which no remedies are truly adequate, States must do what they can to prevent the harm from occurring in the first place. In some cases, that may be possible through injunctive relief ordered by judicial tribunals or administrative bodies. In addition, States must adopt and enforce effective regulatory measures, as described in the following section.

B. Substantive obligations to protect children from environmental harm

55. Ideally, States would set substantive environmental standards at levels that would prevent all harmful environmental interference with the full enjoyment of human rights. While States have obligations to take deliberate, concrete and targeted measures towards that goal, they have some discretion in deciding which means are appropriate in light of available resources.[72] However, this discretion is not unlimited. For example, environmental standards must comply with obligations of non-discrimination, and they should take into account relevant international health and safety standards (see A/HRC/37/59, annex, framework principle 11). Once States have adopted substantive environmental standards, they should ensure their effective implementation by private as well as public actors (ibid., framework principle 12).

[69] See Committee on the Rights of the Child, general comment No. 5, para. 24.

[70] Committee on the Rights of the Child, "Report of the 2016 day of general discussion", pp. 21–22.

[71] See Committee on the Rights of the Child, general comment No. 16, para. 31.

[72] See, for example, Committee on the Rights of the Child, general comment No. 15, para. 72.

56. The discretion of States with respect to the protection of children's rights is further restricted by their obligations under the Convention on the Rights of the Child and other agreements to adopt and implement special measures of protection, assistance and care for children, and to ensure that the best interests of children are a primary consideration in all actions concerning children.[73] These obligations require States not just to protect children from harm, but also to ensure their well-being and development, including by taking into account the possibility of future risk and harm.[74]

57. The discretion accorded States in deciding appropriate levels of environmental protection rests on the assumption that societies will make informed decisions as to how to balance the costs of environmental harm against the benefits of spending resources for other goals, such as faster short-term economic growth. But the cost-benefit calculus is very different for children, especially younger children. The consequences of environmental harm are usually far more severe, and may include death or irreversible, lifelong effects. The cumulative effects of long-term environmental harm, such as climate change and the loss of biodiversity, increase over time, so that decisions taken today will affect children much more than adults. The lack of full information about many types of environmental harm means that their long-term effects are often poorly understood and underestimated. And, finally, the voices of children are only rarely heard in environmental decision-making.

58. Therefore, to satisfy their obligations of special protection and care, and to ensure that the best interests of the child are taken into account, States have heightened obligations to take effective measures to protect children from environmental harm. They should make certain that they are protecting children's rights before they make decisions that may cause environmental harm, including by: collecting and disseminating disaggregated information on the effects of pollution, chemicals and other potentially toxic substances on the health and well-being of children; ensuring that the views of children are taken into account in environmental decision-making; and carrying out children's rights impact assessments. States should adopt and implement environmental standards that are consistent with the best available science and relevant international health and safety standards, and they should never take retrogressive measures.[75] The lack of full scientific certainty should never be used to justify postponing effective and proportionate measures to prevent environmental harm to children, especially when there are threats of serious or irreversible damage. On the contrary, States should take precautionary measures to protect against such harm.[76] Once standards protective of children's rights are adopted, States must ensure that they are effectively implemented and enforced. To that end, they must provide regulatory agencies with sufficient resources to monitor and enforce compliance with domestic laws, including by investigating complaints and bringing appropriate remedial actions.[77]

59. As part of their obligations to protect children from environmental harm, States must adequately regulate private actors, including business enterprises. Businesses can cause environmental harm to children's rights in many ways, including by producing hazardous products, polluting the air and water, creating hazardous waste, contributing to climate change and destroying forests and other natural ecosystems.[78] They can also commit human rights abuses such as violating child labour protections or colluding with governmental or private security forces to use violence against peaceful protestors.

60. As the Committee on the Rights of the Child has stated, States must take all necessary, appropriate and reasonable measures to prevent business enterprises from causing or contributing to abuses of children's rights.[79] This includes ensuring that businesses comply with all applicable environmental standards. States should require businesses, including State-owned businesses, to carry out "child-rights due diligence" to

[73] See Convention on the Rights of the Child, art. 3; International Covenant on Economic, Social and Cultural Rights, art. 10 (3).

[74] See Committee on the Rights of the Child, general comment No. 14, paras. 24 and 71.

[75] See Committee on the Rights of the Child, general comment No. 15, para. 72.

[76] See Rio Declaration on Environment and Development, principle 15.

[77] See Committee on the Rights of the Child, general comment No. 16, para. 61.

[78] Ibid., para. 19.

[79] Ibid., para. 28.

ensure that they identify, prevent and mitigate their impact on children's rights.[80] This due diligence should include careful consideration of the effects of their actual and proposed actions on the rights of children through environmental harm. States must also ensure that information held by businesses relevant to the health and well-being of children is made publicly available.

61. States should cooperate with one another to address the effects of global and transboundary harm on the rights of children.[81] For example, in the negotiation and implementation of multilateral environmental agreements, they should address children's rights, for example by providing that national action plans should include strategies to protect children as well as other vulnerable segments of the population.[82] States should work together to ensure that businesses operating in more than one country comply with their obligations under all applicable domestic laws. The Committee on the Rights of the Child has set out a framework for such cooperation: host States have the primary responsibility to regulate business enterprises operating within their territory, but home States can also have regulatory obligations when there is a reasonable link between the State and the conduct in question. For example, home States in such situations should assist host States with investigation and enforcement; enable access to effective remedies for children and their families who have suffered human rights abuses; and provide that their international assistance agencies identify and protect against harmful effects of any projects that they support.[83]

62. Businesses have direct responsibilities to respect children's rights. To meet these responsibilities, it is necessary, but not sufficient, that businesses comply with domestic laws. Certainly businesses should never seek to evade applicable laws through corruption or other practices, or abuse those laws by, for example, bringing criminal defamation suits against those who oppose their activities. But that is a low bar. To respect the rights of children to be free from environmental harm, businesses should comply with the Guiding Principles on Business and Human Rights; the Children's Rights and Business Principles;[84] and the recommendations of the Committee on the Rights of the Child in its general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights. Among other things, they should undertake environmental and human rights impact assessments that examine the effects of proposed actions on children; develop and make public information about the effects of their actions and products on the health and well-being of children; facilitate children's participation, as appropriate, in consultations; seek to strengthen environmental, health and safety standards, rather than lobby against them; and, in general, avoid causing or contributing to environmental harm to children and remediate any such harm when it does occur.

C. Obligations of non-discrimination

63. The Convention on the Rights of the Child requires its States parties to respect and ensure the rights in the Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status (art. 2). Children are also encompassed by the non-discrimination obligations of States under many other human rights agreements, including the International Covenant on Civil and Political Rights (arts. 2 (1) and 26)) and the International Covenant on Economic, Social and Cultural Rights (art. 2 (2)).

64. The obligations of States to prohibit discrimination and to ensure equal and effective protection against discrimination undoubtedly apply to the equal enjoyment of human rights relating to a safe, clean, healthy and sustainable environment (see A/HRC/37/59, annex, framework principle 3). These obligations apply not only to direct discrimination, but also

[80] Ibid., para. 62.

[81] Ibid., para. 41.

[82] See, for example, Minamata Convention on Mercury, annex C, art. 1 (i).

[83] See Committee on the Rights of the Child, general comment No. 16, paras. 42–45.

[84] The Children's Rights and Business Principles were developed by UNICEF, the United Nations Global Compact and Save the Children, and released in 2012.

to indirect discrimination, when facially neutral laws, policies or practices have a disproportionate impact on the exercise of human rights as distinguished by prohibited grounds of discrimination.[85] The Committee on the Rights of the Child has emphasized that the right to non-discrimination does not just prohibit all forms of discrimination in the enjoyment of rights under the Convention, but also requires appropriate proactive measures taken by the State to ensure effective equal opportunities for all children to enjoy the rights under the Convention. This may require positive measures aimed at redressing a situation of real inequality.[86]

65. While all children are vulnerable to environmental harm, some are particularly at risk. To highlight just a few examples: girl children are more likely to suffer from the lack of clean and safe sources of water; indigenous children from the destruction of natural ecosystems on which they rely for food, water, housing and culture; children with disabilities from the failure to anticipate and respond safely and effectively to natural disasters; and children from low-income families from a vast range of environmental problems, including household air pollution, lack of clean water, exposure to toxic substances and a lack of access to safe and clean opportunities for play and recreation.

66. States should take effective measures to ensure that children in these and other particularly vulnerable situations are able to exercise their human rights on an equal basis, and that environmental harm does not affect them disproportionately. For example, States and business enterprises should require that their children's rights impact assessment procedures take fully into account the impacts of proposed policies, programmes and projects on the most vulnerable. Environmental educational programmes should reflect the cultural and environmental situation of the children involved. States should collect disaggregated data to identify disparate impacts of environmental harm on different groups of children.[87] Environmental information should be made available to children and their parents or other caretakers in their own language. States should ensure that girls, children with disabilities and children from marginalized communities are able to voice their views and that their views are given due weight.[88] States should take steps to enable children with disabilities, as well as others, to play and engage in recreational activities in safe and healthy environments.[89] Children at particular risk and their caretakers should be provided with assistance in accessing effective remedies.

V. Future generations

67. International environmental agreements and declarations on sustainable development often express concerns about the effects of environmental harm on future generations.[90] Indeed, the definition of sustainable development is "development that meets the needs of the present without compromising the ability of future generations to meet their own needs".[91] However, human rights law does not attempt to define the rights of future generations or of obligations of States to them. It is understandable that international environmental and development policy and human rights law take different approaches to

[85] See Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 7.

[86] See Committee on the Rights of the Child, general comment No. 14, para. 41.

[87] See, for example, Committee on the Rights of the Child, general comment No. 5, para. 12; general comment No. 9 (2006) on the rights of children with disabilities, para. 19; general comment No. 11 (2009) on indigenous children and their rights under the Convention, para. 26.

[88] See, for example, Committee on the Rights of the Child, general comment No. 12, paras. 77–78; general comment No. 9, para. 32; general comment No. 11, para. 39.

[89] See Convention on the Rights of Persons with Disabilities, art. 30; Committee on the Rights of the Child, general comment No. 17, para. 50.

[90] The many examples include the Rio Declaration on Environment and Development, principle 3; the United Nations Framework Convention on Climate Change, art. 3 (1); the Convention on Biological Diversity, preamble; Transforming our world: the 2030 Agenda for Sustainable Development.

[91] See the report of the World Commission on Environment and Development entitled "Our Common Future" (A/42/427, annex), ch. 2, para. 1 (p. 54). See also the report of the Secretary-General on intergenerational solidarity and the needs of future generations (A/68/322).

issues concerning future generations. While the former is concerned with the long-term as well as short-term consequences of present decisions, the latter is based primarily on the rights of individual human beings. It is difficult, if not impossible, to define the rights of individuals who are not yet alive.

68. Nevertheless, the division between present and future generations is less sharp than it sometimes appears to be. Concerns about future generations and sustainable development often focus on the state of the environment in particular years in the future, such as the year 2030 or 2100. Many people that will be living in 2100 are not yet born, and in that sense truly belong to future generations. But many people who will be living then are already alive today. To take a personal example, the Special Rapporteur has twin nieces who were born in 2016. The next century will begin before they celebrate their eighty-fourth birthday. Moreover, the line between future generations and today's children shifts every time another baby arrives and inherits their full entitlement of human rights. It is critical, therefore, that discussions of future generations take into account the rights of the children who are constantly arriving, or have already arrived, on this planet. We do not need to look far to see the people whose future lives will be affected by our actions today. They are already here.

VI. Conclusions and recommendations

69. **No group is more vulnerable to environmental harm than children. Air pollution, water pollution and exposure to toxic substances, together with other types of environmental harm, cause 1.5 million deaths of children under the age of 5 every year, and contribute to disease, disability and early mortality throughout their life. In addition, climate change and the loss of biodiversity threaten to cause long-term effects that will blight children's lives for years to come. Making matters worse, children are often not able to exercise their rights, including their rights to information, participation and access to effective remedies.**

70. **States must do more to respect, protect and fulfil the rights of children in relation to environmental harm. To that end, the present report includes a number of specific recommendations, which build on the work of other special rapporteurs, the Committee on the Rights of the Child, OHCHR, UNICEF, WHO and the many others who submitted oral and written communications during the preparation of the report.**

71. **With respect to children's educational and procedural rights, States should, among other things:**

(a) **Ensure that educational programmes increase children's understanding of environmental issues and strengthen their capacity to respond to environmental challenges;**

(b) **Ensure that the effects of proposed measures on children's rights are assessed before the measures are taken or approved;**

(c) **Collect information about sources of environmental harm to children and make the information publicly available and accessible;**

(d) **Facilitate the participation of children in environmental decision-making processes, and protect them from reprisals for their participation or otherwise expressing their views on environmental matters;**

(e) **Remove barriers that children face to access to justice for environmental harm to the full enjoyment of their human rights.**

72. **States also have heightened obligations to take effective substantive measures to protect children from environmental harm, including by ensuring that their best interests are a primary consideration with respect to all decision-making that may cause them environmental harm. In particular, States should adopt and implement environmental standards that are consistent with the best available science and relevant international health and safety standards, never take retrogressive measures,**

and pursue precautionary measures to protect against environmental harm, especially when there are threats of serious or irreversible damage.

73. **In this light, States should consider and, wherever possible, implement recommendations from expert agencies on specific measures to protect children's health and well-being from environmental harm.**[92] **WHO and UNICEF, in particular, have published detailed recommendations, including many examples of good practices.**[93] **Some simple changes could have enormous effects. For example, WHO states that widespread handwashing with soap after defecation and before preparing food would greatly reduce the incidence of diarrhoea, trachoma and respiratory infections that kill or harm so many children under the age of 5.**[94]

74. **States should cooperate to address the effects of environmental harm on the rights of children, including by sharing information on the toxicity and other characteristics of chemicals and other products and ensuring that international trade in chemicals and waste is in full compliance with the relevant environmental treaties.**

75. **With respect to the activities of business enterprises operating in more than one State, the States concerned should cooperate to ensure that the businesses comply with all applicable environmental laws, including by providing that victims of environmental harm allegedly caused by businesses have access to effective remedies in the courts of the States where the businesses are based as well as the States where the victims experienced the harm.**

76. **States should ensure that children in particularly vulnerable situations are able to exercise their human rights on an equal basis and that environmental harm does not affect them disproportionately, including by ensuring that impact assessment procedures take fully into account the effects of proposed policies, programmes and projects on the children most at risk.**

77. **States that have not yet done so should become parties to the Optional Protocol to the Convention on the Rights of the Child, and the State that has not yet ratified the Convention on the Rights of the Child should do so without further delay.**

78. **International financial mechanisms should ensure that the projects that they support do not cause environmental harm that adversely affects the rights of children, by including appropriate protections in their social and environmental safeguards.**

79. **Business enterprises should protect children's rights from environmental harm from their activities, including by carrying out environmental and human rights impact assessments that examine the effects of proposed actions on children, and by fully complying with the Guiding Principles on Business and Human Rights, the Children's Rights and Business Principles, and the recommendations of the Committee on the Rights of the Child in its general comment No. 16.**

80. **The Committee on the Rights of the Child should consider adopting a new general comment on children's rights and the environment.**

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[92] States should also implement the recommendations of the Special Rapporteur on hazardous substances and wastes with respect to the threats to children from toxic chemicals (see A/HRC/33/41, paras. 110–114), and those of OHCHR contained in its report on climate change and human rights (see A/HRC/35/13, paras. 57–66).

[93] See, for example, WHO, *Inheriting a sustainable world?*; WHO, "Don't pollute my future!"; UNICEF, *Clear the air for children*; UNICEF, *Unless we act now*.

[94] WHO, *Inheriting a sustainable world?*, p. 32, indicates that it is estimated that handwashing with soap could reduce diarrhoeal disease by 23 per cent and prevent 297,000 deaths per year from diarrhoea alone.

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Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment on his mission to Uruguay

Note by the Secretariat*

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, on his country visit to Uruguay from 24 to 28 April 2017. During the visit, the Special Rapporteur identified good practices and considered the challenges the country faces in the promotion and protection of human rights related to the environment.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment on his mission to Uruguay**

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** Circulated in the language of submission and Spanish only.

I. Introduction

1. The Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, visited Uruguay from 24 to 28 April 2017, at the invitation of the Government. The purpose of the visit was to examine how Uruguay is implementing its human rights obligations relating to environmental protection, to identify good practices and to consider the challenges the country faces in the promotion and protection of environmentally related human rights.

2. The Special Rapporteur expresses his gratitude to the Government for its invitation and for its cooperation in the preparation of and throughout the visit. During his visit, he met with the Vice-President of the Republic, Raúl Sendic; the President of the Supreme Court of Justice, Jorge O. Chediak; the Minister of Housing, Land Management and the Environment, Eneida de León; the Undersecretary of Foreign Affairs, José Luis Cancela; the Secretary of the Office of the President for Human Rights, Nelson Villarreal; the Secretary of the Office of the President for the Environment, Water and Climate Change, Carlos Colacce; the Chair of the National Human Rights Institution, Ariela Peralta Distefano; and many other government officials, members of Parliament, representatives of civil society organizations, academics and members of the business sector.

3. During a one-day field visit to communities in the Santa Lucía river basin, the Special Rapporteur met with members of a women's community association dedicated to replanting native plants, another women's association conducting outreach activities, owners of an ecotourism lodge, dairy farmers using innovative sanitation technologies and volunteers who were replanting native trees and building fences to shield the Paso Severino reservoir, which provides water to Montevideo.

4. The Special Rapporteur thanks the United Nations Resident Coordinator and the country team in Uruguay for their valuable support prior to and during the visit. He warmly thanks every individual he met for their hospitality and openness in sharing their experiences with him.

II. Legal and institutional frameworks

A. Legal framework

1. International legal framework

5. Uruguay is a party to many international human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights. Since 2013, it has been a party to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which allows individuals or groups of individuals to submit communications alleging violations of the rights protected under the Covenant. In 2009, during its universal periodic review, Uruguay committed to ratifying the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169).

6. Uruguay has also become a party to many multilateral environmental agreements, including the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity, the Montreal Protocol on Substances that Deplete the Ozone Layer, the Stockholm Convention on Persistent Organic Pollutants and the Minamata Convention on Mercury. In 2015, Uruguay was elected Chair of the Standing Committee of the Conference of the Parties to the Ramsar Convention on Wetlands for 2015–2018. Uruguay played a significant role in the negotiation of the Paris Agreement, which it ratified on 19 October 2016. At the regional level, it is actively participating in the negotiation of an instrument on rights of access to information, public participation and access to justice in environmental matters.

2. Domestic legal framework

7. The Constitution of Uruguay (art. 47) enshrines the protection of the environment as a matter of public interest, and provides that people should abstain from any act that "causes grave depredation, destruction or contamination to the environment". The Constitution codifies human rights relevant to environmental protection, including the right to life (art. 7), the principle of non-discrimination (art. 8), the right to freedom of expression (art. 29) and the rights of access to drinking water and sanitation (art. 47).

8. The Law on Environmental Protection, No. 17.283 (2000), recognizes the right of individuals to a healthy and balanced environment (art. 2). It elaborates on article 47 of the Constitution by stating that the protection of air quality, water quality, soil and landscape quality, the conservation of biological diversity, the reduction of toxic chemicals and the prevention, elimination, mitigation and compensation of adverse environmental effects are also matters of public interest (art. 1). It provides that it is a fundamental duty of the State to promote a model of environmentally sustainable development, protecting the environment and, if it has been degraded, requiring its restoration (art. 4).

9. Many other Uruguayan laws and regulations are relevant to environmental protection.[1] For example, Laws No. 15.239 (1981) and 18.564 (2009) regulate the use and conservation of soil and water, and Law No. 13.663 (1968) addresses the production, import and export of fertilizers. Companies that handle chemical substances must comply with Decree No. 307/2009, which requires that they prepare safety data sheets that follow the guidelines of the Globally Harmonized System of Classification and Labelling of Chemicals. Law No. 16.466 (1994) provides the legal framework for environmental impact assessments. It requires prior environmental authorization for listed activities and works, including the construction of roads, the extraction of minerals or fossil fuels and the exploitation or regulation of water resources. Law No. 18.381 (2008) guarantees the right of individuals to have access to public information, without discrimination on grounds of nationality or any other status.

10. In January 2016, Uruguay finalized its National Strategy for the Conservation and Sustainable Use of Biodiversity, 2016–2020, to address the main problems and drivers associated with biodiversity loss and degradation in the country, in light of the expanding and intensifying use of natural resources. The Strategy identifies eight themes: conservation and sustainable use of biodiversity; sectoral incorporation of biodiversity considerations; education, communication and dissemination of information regarding conservation; knowledge generation; information management; regulatory framework updating; strengthening of participation and access to benefits; and resource mobilization.[2]

B. Institutional framework

11. The Ministry of Housing, Land Management and the Environment is the main institution overseeing environmental protection in Uruguay. It formulates and enforces national laws and policies for the protection of the environment. It is composed of five national directorates: the National Environment Directorate, the National Water Directorate, the National Land Management Directorate, the National Housing Directorate and the Directorate-General of the Secretariat. The National Environment Directorate is in charge of formulating, implementing, monitoring and evaluating national plans for the protection of the environment, and for proposing and implementing the national policy on environmental protection, in the framework of sustainable development. The National Water Directorate has the mandate to regulate and monitor activities relating to water.

12. The National Water Supply and Sanitation Company is responsible for providing water services throughout the country and sanitation services in all departments except

[1] Environmental laws are available on the website of the Ministry of Housing, Land Management and the Environment, www.mvotma.gub.uy/evaluacion-de-impacto-ambiental/itemlist/category/147-leyes.html.

[2] Available at www.cbd.int/doc/world/uy/uy-nbsap-v2-es.pdf.

Montevideo. The Regulatory Authority for Energy and Water Services is a regulatory agency that oversees the water and electricity sectors and protects the rights of users of these services.

13. In June 2016, Decree No. 172/016 established the National Environmental System, which brings the Office of the President together with environmental agencies, the National Water Supply and Sanitation Company, the Uruguayan Meteorological Institute, the National System for Response to Climate Change and Variability and the National Emergency System, in order to strengthen, articulate and coordinate public policies related to the environment. Decree No. 172/016 also created the National Environmental Cabinet and gave it a mandate to propose integrated, cross-sectoral public policies for environmental protection. The Cabinet is composed of the Office of the President, the National Environment, Water and Climate Change Secretariat, the Ministry of Housing, Land Management and the Environment and several other ministries, including those with responsibility for defence, finance, public health, agriculture and mining. The National Environment, Water and Climate Change Secretariat has a mandate to provide technical and operational support to the National Environmental Cabinet and supervise the implementation of public policies relating to the environment.

14. Created within the National Environment Directorate, with the participation of the National Water Directorate and other pertinent agencies, the National Environmental Observatory has the authority to consolidate, update and disseminate environmental information. It is tasked with giving special consideration to a number of indicators, including the identification of mechanisms that ensure public participation in environmental matters. Its first implementation phase took place in June 2017.

15. The National System of Response to Climate Change and Variability was created by Decree No. 238/09, in order to coordinate and plan the public and private actions necessary for risk prevention, mitigation and adaptation to climate change. It is led by the Ministry of Housing, Land Management and the Environment, with the participation of other ministries and the Congress of Mayors. It has an advisory commission composed of representatives of academic, technical and research entities.

16. The Ministry of Housing, Land Management and the Environment and the Secretary of the Office of the President for Human Rights signed a cooperation agreement in June 2016, in order to strengthen links between the two agencies. The Government states that the agreement should help to incorporate a human rights perspective into environmental policies.

17. The National Human Rights Institution, which was created by Law No. 18.446, promotes and monitors the integration of human rights norms and standards in national laws, public policies and administrative practices. Although its mandate does not explicitly mention environmental concerns, the Institution has addressed environmental issues. In 2016, it convened a seminar on the right to health and the use of chemicals in the agriculture sector, and it has received and considered individual submissions alleging environmentally related human rights abuses. On World Environment Day, 5 June 2017, the Institution issued a statement noting the links between the right to live in a healthy environment and the effective exercise of many other human rights, such as the rights to life, health, water and food, and pointing out that States have specific obligations in relation to guaranteeing the effective enjoyment of the right to a healthy environment, as well as access to environmental information, public participation in decision-making processes related to the environment, and access to judicial and administrative procedures for the prevention and restitution of environmental harm.[3]

[3] The statement is available, in Spanish only, at http://inddhh.gub.uy/en-el-dia-internacional-del-medioambiente/.

III. Environmental conditions

18. The total population of Uruguay is 3.3 million, of which more than one half live in and around the capital, Montevideo. Uruguay is located in a region that includes temperate grasslands, wetlands, native forests and bodies of water, including coastal lagoons.

19. Compared to most countries, Uruguay does not have high levels of air pollution. The World Health Organization (WHO) reports that the annual levels of fine particulate matter ($PM_{2.5}$) in Uruguay are within a range of 8 to 17 $\mu g/m^3$ with a median of 11 $\mu g/m^3$.[4] Although WHO emphasizes that particulate pollution can affect human health even at very low concentrations, its air quality guidelines suggest an annual mean of no higher than 10 $\mu g/m^3$. The levels of such pollution in Uruguay are thus close to the target, although they could be improved further.

20. Uruguay has biodiverse ecosystems and species. Its territory is the southernmost extent of the range of many species, and it hosts a significant number of migratory species, especially migratory birds. Natural grasslands cover about 60 per cent of the country; together with the neighbouring regions in Argentina and Brazil, they form one of the largest temperate grasslands in the world. In Uruguay, the grasslands ecosystem includes approximately 2,000 species of herbaceous plants, of which 400 are grasses.[5] Its wetlands, which cover approximately 12 per cent of its territory, act as natural regulators and filters of the hydrological system and provide habitat for a wide range of birds and other species, including otters and capybara.[6] Areas of native forest have grown over the past 25 years from 3.5 per cent to 6 per cent of the national territory.[7] Nevertheless, Uruguay has one of the lowest percentages of protected areas in the Latin American and Caribbean region. Only 0.8 per cent of its territory is included in its National System of Protected Areas. In addition, Uruguay reports that 29 per cent of the species in the country are under some level of threat.[8]

21. Agriculture is a key part of the economy, and much of the territory is occupied by farms and ranches. Exports of agricultural products, led by beef and soy, make up about three quarters of total exports, and Uruguay plans to expand its production of crops and livestock. The intensification of land use poses serious environmental challenges to the health of the grasslands and to water quality.[9]

22. The major rivers in the country include the Uruguay, which joins with the Paraná to flow into the Río de la Plata estuary, and the Santa Lucía. The Santa Lucía basin, which includes a reservoir formed by the Aguas Corrientes dam, provides drinking water for the people living in and around Montevideo, who constitute approximately 60 per cent of the population. In 2012, the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, visited Uruguay and reported that some livestock agribusinesses, including dairy farms, were having negative impacts on water resources through the discharge of agrochemicals and faecal waste, mainly from pigs and cows (see A/HRC/21/42/Add.2, para. 54).

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[4] World Health Organization, *Ambient air pollution: A global assessment of exposure and burden of disease* (2016), pp. 19 and 62. Fine particulate matter is the most closely studied type of pollutant, and it is often used as a proxy to indicate levels of exposure to air pollution generally. With diameters of 2.5 micrometres or less, fine particulates can penetrate into the lungs and cause adverse short-term and long-term effects on human health.

[5] "Estrategia Nacional para la Conservación y Uso Sostenible de la Diversidad Biológica del Uruguay 2016–2020" (National Strategy for the Conservation and Sustainable Use of the Biological Diversity of Uruguay 2016–2020), p. 15. Available, in Spanish only, at www.cbd.int/doc/world/uy/uy-nbsap-v2-es.pdf.

[6] Ibid.

[7] Convention on Biological Diversity, "Uruguay country profile", available from www.cbd.int/countries/profile/default.shtml?country=uy#facts.

[8] "Estrategia Nacional para la Conservación y Uso Sostenible de la Diversidad Biológica del Uruguay 2016–2020", p. 17.

[9] See Convention on Biological Diversity, "Uruguay country profile".

23. In 2013, a report from an environmental organization stated that over 90 per cent of the rivers in Uruguay suffered from excessive levels of nutrients such as phosphorous and nitrogen, the result of agricultural fertilization.[10] On more than one occasion in the past, pollution of water in the Santa Lucía basin, in particular, has affected the quality of the drinking water in Montevideo. In March 2013, for example, algae contamination in the Santa Lucía basin, apparently caused by nutrient pollution, affected the colour and taste of drinking water in Montevideo, greatly increasing public concerns about the effects of agricultural pollution on water quality.

24. The Government and people of Uruguay are aware of the challenges posed by the intensification of agricultural and livestock production. In 2016, in its proposal for a National Water Plan, the Ministry of Housing, Land Management and the Environment recognized that increased agricultural production meant more pressure on water quality due to intensive land use.[11] In the same report, the Ministry identified as a potential threat the intensification of agriculture, as it could increase diffuse pollution.[12] The final National Water Plan, which was approved by Decree No. 205/017 on 31 July 2017, supports integrated management of the water resources of the country, including by preventing and mitigating environmental and other impacts on the quantity and quality of the water.

25. Even before the National Water Plan was adopted, the Government had adopted measures to improve the protection of the Santa Lucía basin, some of which the Special Rapporteur saw first-hand. For example, he viewed fences installed around reservoirs to prevent livestock from approaching the water bodies, and met family dairy farmers who have received support from the Government in adopting innovative methods of managing waste in order to protect against run-off. He also met volunteers who were replanting native trees around reservoirs in the basin to help protect against run-off and erosion, and members of a women's community association who were working to revive native plants in the area.

IV. Good practices and challenges

26. Uruguay has many good practices in relation to human rights and the environment, reflecting an overall commitment to respecting and protecting human rights in its environmental policies. At the same time, like other countries, Uruguay faces challenges in implementing human rights obligations relating to the environment. This section describes good practices and challenges in four areas that were discussed by many interlocutors during the visit: (a) climate change; (b) access to information; (c) public participation in decision-making; and (d) access to effective remedies.

A. Climate change

27. Climate change threatens the full enjoyment of many human rights, as the Special Rapporteur has previously explained (see A/HRC/31/52). As average global temperatures rise, deaths, injuries and displacement of persons from climate-related disasters such as tropical cyclones increase, as do mortality and illness from heat waves, drought, disease and malnutrition. The worst effects of climate change are often felt by those who are already in vulnerable situations, including because they are living in poverty or belong to marginalized populations. Global warming causes sea levels to rise, threatening the very existence of small island States and coastal communities. Uruguay is particularly vulnerable to climate change along its lengthy coastline, where much of its population lives

[10] Katherine Watkins, "Around 94% of Uruguay's rivers suffer from contamination – report", 11 September 2013. Available at www.bnamericas.com/news/waterandwaste/94-of-uruguays-rivers-suffer-from-contamination-report.

[11] *Propuesta del Plan Nacional de Aguas*, p. 259. Available, in Spanish only, at www.mvotma.gub.uy/images/slides/PNA%202017%20propuesta%20PE.pdf.

[12] Ibid., p. 241.

in low-lying areas. Rising seas and increasing frequency and severity of storms threaten increased flooding, soil contamination and the loss of wetlands, among other problems.

28. Because climate change is caused principally by burning fossil fuels, which releases carbon dioxide into the atmosphere, the fight against climate change requires countries to shift to other sources of energy. Over the past decade, Uruguay has become a leader in this effort. Its shift to renewable energy has been motivated not only by environmental concerns, but also by economic considerations, including a desire to be less dependent on energy sources in other countries.

29. In 2008, Uruguay began to pursue a national long-term strategy to reduce its dependence on fossil fuels and to increase the use of renewable energy. At the time, its sources of energy were primarily oil and its derivatives.[13] Its comprehensive National Energy Plan for 2005–2030 received support from all political parties with representation in Parliament, and was ratified by Parliament in 2010. Its principal goals were to diversify the energy mix of sources and suppliers, to reduce costs resulting from dependence on fossil fuel and to increase the use of renewable energy.[14] The National Energy Plan has surpassed its initial targets. Over 96 per cent of electricity in Uruguay now comes from renewable resources. In 2016, some 56 per cent of the electricity was from hydroelectric sources, 22 per cent from wind power, 18 per cent from biomass, 1 per cent from solar and only 3 per cent from fossil fuels. Uruguay has achieved this result through a variety of different policies, including providing specific tax incentives for sources of renewable energy.

30. Uruguay is an inspiring example of how a country can replace fossil fuels with renewable energy. The Special Rapporteur encourages the Government to continue to promote its experience in international and regional forums. While Uruguay continues to face challenges in this area, including with respect to emissions from transportation, it can help to lead global discussions on how renewable energy policies support sustainable development and mitigation of climate change.

31. Because the effects of climate change on Uruguay are driven by global emissions, which are still rising, climate change will continue to affect Uruguay for years to come. As a result, Uruguay, like other countries, has to develop and implement effective adaptation plans. In its planning, Uruguay has addressed persons who are in particularly vulnerable situations, including by developing plans to relocate persons from flood-prone and/or polluted areas. At the time of the Special Rapporteur's visit, Uruguay was in the process of developing national adaptation plans for the agricultural sector, as well as for cities and coastal zones. The Government plans to release all of these plans by 2019. Uruguay is also working with the World Bank on a project aimed at reducing emissions from deforestation and forest degradation by protecting native forests, which are important sinks for carbon dioxide.

32. The National Climate Change Policy to implement the Paris Agreement was also under discussion at the time of the Special Rapporteur's visit. The Policy received support from the National Environmental Cabinet on 27 April 2017 and was approved on 3 November 2017 by Decree No. 310/017. According to the information received during the visit, over 100 stakeholders participated in the drafting process. The first paragraph of the policy provides that one of its objectives is to contribute to the sustainable development of the country, with a global perspective of intra- and intergenerational equity and human rights, making a direct link between human rights, sustainable development and environment protection.

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[13] See Ministerio de Industria, Energia y Mineria, "Sector energético en Uruguay". Available, in Spanish only, at www.dne.gub.uy/invierta-en-energia-en-uruguay/-/asset_publisher/G1lQ59b7RjDv/content/sector-energetico-en-uruguay.

[14] See Dirección Nacional de Energia y Tecnologia Nucelar, "Politica energética 2005–2030". Available, in Spanish only, at www.miem.gub.uy/documents/49872/0/Pol%C3%ADtica%20Energ%C3%A9tica%202030?version=1.0&t=1352835007562.

B. Access to information

33. One fundamental aspect of protecting human rights in the environmental context is the implementation of the right to information about environmental problems and policies. The Universal Declaration of Human Rights (art. 19) and the International Covenant on Civil and Political Rights (art. 19) recognize the right of all persons "to seek, receive and impart information". The right to information is not only a human right itself; like the right to public participation, it also supports the full enjoyment of other rights, including the rights to life and health. International human rights bodies have recognized that access to environmental information is necessary to protect human rights, including the rights to life and health, from infringement through environmental harm.

34. Access to environmental information has two dimensions (see A/HRC/37/59, annex, framework principle 7). First, States should regularly collect, update and disseminate environmental information, including information about environmental quality, pollutants and other environmental threats, and relevant laws and policies. In situations involving imminent threats, in particular, States must ensure that all information that would enable the public to take protective measures is disseminated immediately. Second, States should provide affordable, effective and timely access to environmental information held by public authorities, upon the request of any person or association, without the need to show a legal or other interest. Grounds for refusal of a request should be set out clearly and construed narrowly, in light of the public interest in favour of disclosure.

35. In Uruguay, the Ministry of Housing, Land Management and the Environment is required by Law No. 17.283 (art. 12) to prepare an annual report on the environmental situation, which should include information systematized by thematic areas. By providing general environmental information to the public, the report enables concerned persons to participate in environmental decision-making. Through a number of indicators, the report also allows for the monitoring of the state of the environment with a view to confirming or, where necessary, correcting the application of environmental protection. However, the report has not always been regularly published. The most recent report was issued in 2013.[15] According to the information received, the next report will be released in 2018 and made available by the National Environmental Observatory.

36. The Ministry of Housing, Land Management and the Environment also seeks to provide environmental information through its website. The website includes an online guide,[16] which allows the public to access in an interactive manner the national environmental report. Through the website, individuals may also access other practical information, including actions taken by the authorities to protect the environment, contact details of various actors in the field and information about actions that people may take to contribute to environmental protection. Another online tool developed by the Ministry is the Environmental Visualizer, which provides Internet users with the opportunity to click on a map of Uruguay to zoom in and access very detailed information about water quality, air quality, and protected areas, among others, in any part of the country.[17]

37. Law No. 18.381 on access to public information provides for a detailed administrative procedure to facilitate access to public information. Underlining that access to public information is a right of all, the law makes clear that individuals can exercise it without the need to justify why they are requesting particular information (art. 3). In particular, the Special Rapporteur welcomes the fact that when the requested information is related to human rights violations or is pertinent to investigating, preventing or avoiding such violations from happening, limitations on access to public information cannot be invoked (art. 12).

38. However, the Special Rapporteur heard criticisms of several aspects of the system of environmental information. For example, some observers have pointed to an absence of

[15] See www.mvotma.gub.uy/portal/ciudadania/biblioteca/documentos-de-ambiente/item/10006608-informe-del-estado-del-ambiente-2013.html.

[16] See www.mvotma.gub.uy/guiaambiental/.

[17] See www.mvotma.gub.uy/visualizador.

sufficient research on the links between environmental problems and health problems. In addition, some civil society representatives have stated that access to information is not always effective, for several reasons, including that the relevant documents may be too technical to be easily understood, and that they are often difficult to find. In particular, the Special Rapporteur heard from multiple interlocutors, within and outside the Government, that it is sometimes very difficult to determine which agency is responsible for providing the requested information. While the Ministry of Housing, Land Management and the Environment and others have adopted methods through which individuals can access information, the large number of agencies that may have relevant mandates can make it difficult for the public to know which agency is responsible, and even for the agencies themselves to share information with one another.

39. Effective access to information requires measures to provide information in forms that are easily accessible and understandable by the general public. In particular, it requires the provision of information that allows the public to become aware of potential environmental risks and of recommendations for protecting themselves. The Government could better coordinate the many different government sources of relevant information and make the information more easily accessible. For example, the public should be able to readily find understandable information about water quality, both at the tap and in lakes and rivers. Additional measures may be necessary to make environmental information accessible to those who are in particularly vulnerable situations or who are susceptible to environmental harm, including people living in poverty, so that they can have a voice in the development and implementation of policies and programmes affecting their lives. In addition, disaggregating environmental and health data across dimensions such as geography, gender and age facilitates measuring progress and determining appropriate follow-up processes in a more efficient and effective manner.

40. Access to information about water quality is of particular concern in Uruguay. Civil society representatives the Special Rapporteur met during his visit expressed their concerns that the public had not received full information about water quality in the past, including during the 2013 crisis of confidence in the quality of drinking water in Montevideo (see paragraph 23 above). The Government informed the Special Rapporteur of its efforts to improve its provision of information on the quality of water in the Santa Lucía basin, including a number of reports published by the Ministry of Housing, Land Management and the Environment on its website.[18] The Government has instituted monthly monitoring of water quality in the basin at 15 stations, with the support of the Faculty of Science of the University of the Republic, and is also monitoring water quality in the Laguna del Sauce basin (the main source of drinking water in the department of Maldonado), and the Río Negro basin. As agricultural and economic activity in the water basins continues to increase, the rapid dissemination of reliable information to the public is critical to ensuring that they have confidence in the quality of their water, both in the rivers and basins and at the faucet.

41. Similarly, information relating to large-scale development projects should be made publicly available and accessible (see A/68/262, para. 62). During his visit, the Special Rapporteur heard concerns that decisions to approve large infrastructure projects, often involving foreign investment, occur outside the framework of social and environmental assessment. The Special Rapporteur reminds the Government that such proposals should be assessed in accordance with applicable laws and human rights obligations (see A/HRC/37/59, annex, framework principle 8). In particular, it should provide meaningful opportunities for the public to participate and result in public reports that clearly describe the proposals, the alternatives and the possible environmental impacts. To protect against interference with the full enjoyment of human rights, the assessment of environmental impacts should also examine the possible effects of the environmental impacts of proposed projects and policies on the enjoyment of all relevant rights, including the rights to life, health, food, water, housing and culture.

[18] For instance, one tab of the Environmental Visualizer provides web users with direct access to information on the state of the environment in the Santa Lucía river and in the Paso Severino reservoir.

42. In light of its mandate to gather, update and disseminate environmental information, the newly established National Environmental Observatory has an important role to play in ensuring that information about environmental quality, including water quality, and about proposals for major projects is made publicly available.

43. Publicizing information online is a valuable way to disseminate information to a large number of people, but it has its limitations. Not everyone has easy access to online information, and the information may not always be adequate to address particular issues. Therefore, to be effective, the provision of environmental information should extend to include programmes to raise awareness of environmental issues through on-site training sessions, especially in remote areas. For example, the Special Rapporteur was informed by the National Water Directorate that in rural areas, some teachers are receiving training about the use of technical equipment to monitor water quality, and are being provided with information about how to contact the authorities in case problems arise. This good practice in informing and training members of local communities helps to ensure that they can provide valuable information to others in their communities and beyond.

C. Public participation in environmental decision-making

44. The right of everyone to take part in the government of their country and in the conduct of public affairs [19] includes participation in decision-making related to the environment, including the development of policies, laws, regulations, projects and activities. Ensuring that these environmental decisions take into account the views of those who are affected by them increases public support, promotes sustainable development and helps to protect the enjoyment of rights that depend on a safe, clean, healthy and sustainable environment (see A/HRC/37/59, annex, framework principle 9). To be effective, public participation must be open to all members of the public who may be affected and must occur early in the decision-making process. States should provide for the prior assessment of the impacts of proposals that may significantly affect the environment, and ensure that all relevant information about the proposal and the decision-making process is made available to the affected public in an objective, understandable, timely and effective manner.

45. The Law on Environmental Protection, No. 17.283, affirms that environmental protection affects the society as a whole and that people and representative organizations have the right and the duty to participate in the process (art. 6 (d)). Uruguay has a number of institutions that facilitate public participation in decision-making, including environmental decision-making.

46. Uruguay has National Advisory Commissions, which include representatives from the Government, the private sector, academia, organized workers and civil society organizations, among others, and which provide advice to the Government on various issues. The first of these commissions concerning environmental matters, the Technical Advisory Commission for the Protection of the Environment and the Advisory Commission on Land Management, were established in the 1990s. In the 2000s, other commissions were created, including the National Commission for Protected Areas and the Advisory Commission on Water and Sanitation. Over the years, these commissions have become multisectoral spaces for discussion, contributing to the elaboration of normative regulations and management plans in various sectors. Since 2012, three regional committees on water resources and nine watershed and aquifer commissions, each of them with tripartite representation (government, civil society and users), have been established to incorporate participation of local stakeholders.

47. Uruguay has other important mechanisms for public participation in environmental decision-making. For example, the Manifest is an online platform for the dissemination of information, through which citizens can make written contributions and comments. Maintained by the Ministry of Housing, Land Management and the Environment, this

[19] Universal Declaration of Human Rights, art. 21; International Covenant on Civil and Political Rights, art. 25.

mechanism facilitates public input into the environmental impact assessment procedure. Under its framework, an Environmental Report Summary with a succinct description of proposed projects is made available to the public (see Decree No. 349/2005). Public hearings provide information to the public and provide a mechanism for receiving public inputs about proposed projects, with a view to advising the Ministry in its decisions to adopt or reject the projects. These two mechanisms may also be triggered for proposals to add new areas to the National System of Protected Areas, or when new instruments related to environmental planning are developed. Monitoring commissions allow public participation in environmental monitoring and control.

48. A particularly interesting practice is the Open Council of Ministers. From time to time, the Ministers hold open sessions outside the capital, including in small towns and rural areas, at which the public can raise complaints and questions. Although these meetings are not limited to environmental issues, they provide another opportunity for the public to bring such issues directly to the attention of high-ranking officials in the Government.

49. Public participation is important in the development of new national strategies and policies. A recent example is the adoption by Uruguay of a National Water Plan, first proposed in draft form in June 2016. According to information provided by the National Water Directorate, between July 2016 and March 2017, about 2,000 participants commented on several iterations of the plan, at meetings held in the capital and in the countryside. In addition, early in the process a group of 15 individuals, of diverse ages and backgrounds, were brought together to discuss the draft plan, in a process overseen by experts from the University of the Republic. The Special Rapporteur was informed that the process had succeeded at incorporating a wide range of views into the final version of the Plan. Academics from the University of the Republic expressed their support for the process and their willingness to help to oversee such procedures in other settings, although they cautioned that additional resources might be necessary in order for them to continue to play that role.

50. However, some civil society representatives told the Special Rapporteur that they had been invited to participate only at a late stage of the development of the Plan and felt that they had had limited influence. Some expressed concerns at the selection process for participation, noting that some participants had been directly selected by the authorities, which left other relevant stakeholders out of the discussion. Others regretted that the consultative process was too limited, either because the subject matter discussed was too narrow or too technical and the time allocated for consultations too short, or because there was a perception that the decisions had already been taken even before the consultation took place.

51. At the time of the Special Rapporteur's visit, the Government was in the process of developing a new National Environment Plan for Sustainable Development, to cover the period until 2030. The Government is now in the process of receiving contributions to the Plan, within the framework of the National Environmental Cabinet with the assistance of the National Environment, Water and Climate Change Secretariat. The University of the Republic is involved in the design and implementation of avenues for the participation of civil society, and the Plan will also be considered by the National Advisory Commissions of the Ministry of Housing, Land Management and the Environment. The National Human Rights Institution informed the Special Rapporteur that, as part of the consultation process, it had been approached by the authorities to ensure the integration of human rights into the Plan.

52. Public participation is critical in relation not only to the development of new policies, but also to specific proposals. Consideration of the environmental impacts of proposed projects, for example, must include adequate opportunities for members of the public, particularly those who may be directly affected, to participate, and the views of the public must be taken into account in final decisions.

53. The Special Rapporteur received reports of concerns from individuals and civil society organizations about a mining project near Quebrada de los Cuervos, the site of an important ecosystem that provides habitat for vulnerable species, including the saffron-

cowled blackbird (*Xanthopsar flavus*), the chestnut seedeater (*Sporophila cinnamomea*) and the black-and-white monjita (*Xolmis dominicanus*). Quebrada de los Cuervos was the first place listed as a protected area under the National System of Protected Areas, in 2008. In September 2016, a public hearing was held on a proposal by the business enterprise Cementos del Plata, S.A., to extract limestone in an area about two kilometres away from Quebrada de los Cuervos. A public hearing on the proposal was held in September 2016, and the project received a permit from the Ministry of Housing, Land Management and the Environment in January 2017.

54. Civil society organizations expressed serious concerns that the time provided by the authorities was not enough to conduct a thorough analysis of the impact the project may have on the environment. Furthermore, they complained that despite their efforts to highlight adverse effects on the environment during the public hearing of September 2016 and in the following months, no reaction was received from the Government. In late December 2016, a group of inhabitants reportedly handed a submission with detailed concerns to the Ministry of Housing, Land Management and the Environment, but did not receive any response. In April 2017, the Neighbourhood Council of Quebrada de los Cuervos announced that it would no longer participate in the Specific Advisory Commission, a formal participation space designed by the Government, which allows private landowners, local authorities and social organizations near each protected area in the National System of Protected Areas to give advice in relation to the management of the protected area and its natural resources. While these advisory commissions can play a very important role in facilitating public participation, they can work only if the participants believe that their views are given due weight. The Special Rapporteur is concerned that it did not appear to work effectively in this case.[20]

55. The relationship between those who live in and near protected areas and the government agencies responsible for administering them should be one of mutual support (see A/HRC/25/53/Add.1, para. 44). Moreover, mining permits should result in benefits not only for the country as a whole, but for the local communities most directly affected by the mining. The Government must impose restrictions that ensure that mining activities proceed only if these requirements are met. In relation to Quedabra de los Cuervos, the Government should take steps to rebuild a relationship of trust with the local communities, including by demonstrating that no projects will be allowed to go forward without adequate environmental impact assessment and safeguards to protect against environmental harm, including in particular harm to this protected area.

56. Closely related to the right to public participation are the rights to freedom of expression, peaceful assembly and association. The obligations of States to respect and protect these rights[21] encompass the exercise of the rights in relation to environmental matters (see A/HRC/37/59, annex, framework principle 5). Restrictions on the exercise of these rights are permitted only if they are provided by law and necessary in a democratic society to protect the rights of others, or to protect national security, public order, or public health or morals. Any restrictions must be narrowly tailored to avoid undermining the rights. For example, blanket prohibitions on protests surrounding the operations of mining, forestry or other resource extraction companies are unjustifiable (see A/HRC/29/25, para. 22).

57. On 20 March 2017, shortly before the Special Rapporteur's visit, the President of the Republic issued Decree No. 127/999 regulating the public use of streets. The decree authorizes the Ministry of the Interior to take the necessary measures to preserve the public use of streets, roads or highways whose traffic may be obstructed or interrupted by persons, vehicles or objects of any nature. Serious concerns were expressed that the decree might be

[20] The dispute has continued since the Special Rapporteur's visit. On 1 June 2017, the Neighborhood Council of Quebrada de los Cuervos (which includes the Cooperativa Agraria Quebrada de los Cuervos, the Sociedad de Fomento Rural del Lugar and local inhabitants) presented a petition to the Ministry of Housing, Land Management and the Environment, demanding the annulment of the decision taken in January 2017.

[21] See Universal Declaration of Human Rights, arts. 19–20; International Covenant on Civil and Political Rights, arts. 19 and 21–22.

interpreted to authorize the police to clear streets and roads of peaceful protestors, without any judicial oversight, which would interfere with the exercise of the rights to freedom of expression, peaceful assembly and association.

58. In response, the National Human Rights Institution issued a statement recalling the applicable norms under international human rights law, including in particular the International Covenant on Civil and Political Rights. The Institution underlined that any limitation on the right to freedom of peaceful assembly must be prescribed by law and must be reasonable and appropriate to the objective pursued, which is only to ensure that the demonstration is peaceful and that protection is provided to all persons, including the protesters themselves. It stressed that such measures should never result in the criminalization of those who are demonstrating in a peaceful manner.[22]

59. The Special Rapporteur strongly supports the statement of the National Human Rights Institution. As the Human Rights Committee, the body charged with overseeing the International Covenant on Civil and Political Rights, has stated, in adopting laws providing for restrictions, States should always be guided by the principle that the restrictions must not impair the essence of the right; the relation between right and restriction, between norm and exception, must not be reversed.[23] In a joint report on the proper management of assemblies, issued in 2016, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions made clear that assemblies are a use of public space that is no less legitimate than commercial activity or the movement of vehicles and pedestrian traffic. A certain level of disruption to ordinary life caused by assemblies, including disruption of traffic, annoyance and even harm to commercial activities, must be tolerated if the right to freedom of peaceful assembly is not to be deprived of substance (see A/HRC/31/66, para. 32). Implementation of Decree No. 127/999 must be carefully monitored to ensure that the decree does not provide a basis for actions interfering with the rights to freedom of expression and of peaceful assembly.

D. Access to effective remedies

60. States should provide for access to effective remedies for violations of human rights and domestic laws relating to the environment (see A/HRC/37/59, annex, framework principle 10). States have obligations under human rights law to provide for access to judicial and other procedures for effective remedies for violations of human rights,[24] and those obligations encompass remedies for violations of human rights relating to the environment, including the rights of freedom of expression, association and peaceful assembly, access to environmental information and public participation in environmental decision-making.

61. In addition, each State should ensure that individuals have access to effective remedies for failures to comply with the laws of the State relating to the environment. Access to effective remedies is particularly important for groups that are disproportionately affected by environmental harm. For environmental standards to be effective, Governments must comply with them in their own operations, and they must also monitor and effectively enforce compliance with the standards by preventing, investigating, punishing and redressing violations of the standards by business enterprises and other private actors, as well as by governmental authorities (ibid., annex, framework principle 12). However strong an environmental standard may be on paper, it is meaningless if it exists only on paper and not in practice.

62. As the Special Rapporteur on the human rights to safe drinking water and sanitation has emphasized, successful regulation depends not only on standard-setting, but also on

[22] See http://inddhh.gub.uy/declaracion-de-la-institucion-nacional-de-derechos-humanos-y-defensoria-del-pueblo-inddhh-respecto-al-decreto-no-762017-de-20-de-marzo-de-2017/.

[23] See Human Rights Committee, general comment No. 27 (1999) on freedom of movement, para. 13.

[24] See, for example, Universal Declaration of Human Rights, art. 8; International Covenant on Civil and Political Rights, art. 2 (3).

strong independent regulators. Regulators need to have the capacity, in terms of human resources, skills, funding and independence from interference, to monitor whether regulations are being complied with, carry out on-site inspections, and impose fines and penalties in the case of breaches (see A/68/264, para. 52). States should implement training programmes for law enforcement and judicial officers to enable them to understand and enforce environmental laws, and they should take effective steps to prevent corruption from undermining the implementation and enforcement of environmental laws.

63. The Government of Uruguay has several administrative tools to promote compliance with environmental laws and regulations, and access by individuals to effective remedies for violations. Of particular importance is a system that allows environmental complaints to be filed with the Ministry of Housing, Land Management and the Environment.[25] The complaints can be submitted online at the website of the Ministry, through telephone calls, or through meetings in person. According to the Ministry, the number of complaints it receives has increased in recent years, and more than 450 complaints were received in 2016 alone.

64. Within the Ministry, the National Environment Directorate has the authority to respond to complaints by, among other things, carrying out inspections and conducting laboratory analysis (for example, of chemicals alleged to cause environmental harm). When it finds violations of the law, the Ministry may impose warnings, confiscate and/or destroy vehicles, instruments and devices directly linked to the commission of the offence, or even suspend the offender's authorizations or permits, for up to 180 days (Law No. 17.283, art. 15). The Ministry may also request the assistance of the police if necessary (Law No. 16.170, art. 453). The original complainants should be notified of the results of the investigation. If a complaint does not fall within its mandate, the Directorate forwards the request to the competent authorities, which may include municipal governments. Several other ministries have adopted their own grievance mechanisms for individuals reporting violations of the applicable laws and regulations, including through online systems.

65. While these mechanisms appear to provide a variety of opportunities for access to effective remedies, the Special Rapporteur heard a number of complaints about them during his visit. One problem is that the large number of authorities at the national and local levels with potential responsibility for environmental problems may be confusing for the public. Individuals outside Government may not know where to send their initial communications, and even within the Government, it may not always be clear which office is responsible for handling them. For example, environmental harm caused by chemicals is often within the authority of the Ministry of Livestock, Agriculture and Fisheries, not the Ministry of Housing, Land Management and the Environment, but the public generally sends its complaints to the latter.

66. In addition, the Special Rapporteur heard from many interlocutors that the complaint procedure can be very slow and unresponsive. He heard descriptions of complaints that received a response only months after being submitted, or not at all. The National Human Rights Institution also receives submissions on human rights, some of which relate to environmental matters. The Institution informed the Special Rapporteur that often the submissions that it receives indicate excessive delays in the administrative procedures for addressing and resolving environmental complaints.

67. In light of these concerns, the Special Rapporteur believes that the Government should take steps to make its environmental complaint procedures more transparent and responsive. Specifically, the Special Rapporteur invites the Government to consider the adoption of an environmental ombudsperson, or an equivalent mechanism, with the mandate to receive all environmentally related complaints or inquiries from the public. Creating this type of "green window" for the public to send messages to the Government has several advantages.

68. First, it would dispel the confusion among the public about how to contact the Government on environmental issues. Rather than having to decide which of several

[25] See www.mvotma.gub.uy/denuncias-ambiente.html.

agencies has the most relevant mandate, concerned members of the public could simply send their message to the environmental ombudsperson. The Government could publicize the contact information through its websites and other media.

69. Second, the ombudsperson would have the expertise to know where to direct the communication within the Government. To be clear, the ombudsperson would not replace existing ministries or offices or conduct investigations itself. The relevant experts would remain where they are within the Government. The role of the ombudsperson would be primarily to act as a conduit between the public and the relevant agencies.

70. Third, the ombudsperson could also receive questions from the public. Not all communications from the public are complaints; sometimes, members of the public are seeking environmental information held by the Government, but are unable to find it because they do not know where it is held within the Government or how to access it. Again, the office of the ombudsperson would be able to send the relevant query to the appropriate recipient and facilitate the delivery of responses to the person or persons who raised the question.

71. Finally, the ombudsperson would be ideally situated to ensure that communications are addressed in a timely way by the appropriate agency, and to follow up and, if necessary, encourage the agency to respond more quickly. The ombudsperson should report regularly to the public on the number of communications received and on the actions taken in response to the communications.[26]

72. More generally, the Special Rapporteur also heard concerns about enforcement of the environmental laws at the judicial level. Administrative complaint mechanisms, by themselves, are often not enough to ensure compliance with environmental laws. It is necessary, therefore, to provide for effective access to the courts. However, the Special Rapporteur heard concerns that recourse to the judicial system is often too expensive and time-consuming. While these problems are, unfortunately, prevalent in much of the world, the Government nevertheless can and should take steps to facilitate access to courts, including by ensuring that plaintiffs do not face unreasonable or excessive costs or other obstacles to bringing cases.

73. It is also critical that the Government itself fulfils its responsibilities to enforce environmental laws by bringing enforcement actions, in appropriate cases. In this context, the Special Rapporteur applauds two recent efforts, in particular. First, the Attorney General has created a Specialized Unit on the Environment, which should have sufficient resources and the expertise to prosecute environmental violations. Second, the Government has proposed a law that would establish, for the first time, that certain acts constitute environmental crimes and may be punished accordingly.

V. Conclusions and recommendations

74. **The vigorous and continuous efforts of the authorities to adopt a robust legal and institutional framework for environmental protection, including at the constitutional level, demonstrate that Uruguay has a long-standing commitment to a healthy environment and sustainable development. In particular, Uruguay has made remarkable efforts to reduce its carbon emissions over the past decade. The Special Rapporteur commends Uruguay for its good practices in this area, and encourages it to continue to share its experiences with other States.**

75. **At the same time, Uruguay faces challenges in the continued pursuit of sustainable development. It must ensure that as it increases its production of agriculture and livestock, it protects the environment and the human rights of those who depend upon it. To that end, it is of particular importance that it respects the**

[26] To be clear, the Special Rapporteur does not suggest that the National Human Rights Institution should be tasked with this mandate. While the Institution should continue to be available to receive and consider submissions alleging environmentally related human rights abuses, the Institution cannot take the place of effective administration complaint procedures.

rights of the public to have access to environmental information, to participate in decision-making related to the environment and to have access to effective remedies for environmental harm. The Special Rapporteur hopes that the following recommendations will help the Government to continue to promote human rights relating to the environment in an effective, comprehensive and long-lasting manner.

General recommendations

76. **The Government should provide increased financial and technical support to the National Human Rights Institution so that it can continue to address the relationship between human rights and environmental issues.**

77. **The National Environmental Plan provides an important opportunity for Uruguay to demonstrate its continuing commitment to human rights and to environmental protection. Both the development and the implementation of the plan should reflect a rights-based approach to environmental protection.**

78. **As the Special Rapporteur has previously explained, the full enjoyment of human rights, including the rights to life, health, food and water, depends on the services provided by ecosystems. The provision of ecosystem services depends on the health and sustainability of ecosystems, which in turn depend on biodiversity. The full enjoyment of human rights thus depends on biodiversity, and the degradation and loss of biodiversity undermine the ability of human beings to enjoy their human rights (see A/HRC/34/49, para. 5). Therefore, it is critical that Governments fulfil their obligations and commitments with respect to the protection of biodiversity. In this respect, the Special Rapporteur urges Uruguay to take the steps necessary to meet its goal, as stated in its National Strategy for the Conservation and Sustainable Use of Biological Diversity 2016–2020, of conserving at least 15 per cent of its continental area and 2 per cent of its marine surface, by means of its National System of Protected Areas and other conservation measures.**

79. **Uruguay should fulfil its commitment to ratify the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169). Although indigenous peoples constitute a very small percentage of the Uruguayan population, ratifying the Convention would nevertheless provide greater protection to indigenous peoples against the persistence of stereotypes and prejudice against them. Ratification would also highlight the importance of the treaty in the international context, by moving it closer to universal membership.**

80. **The Special Rapporteur recognizes that Uruguay has played a very positive role in working towards a strong regional agreement on access to environmental information, public participation in environmental decision-making and access to justice in environmental matters, and it encourages Uruguay to continue to work for a binding legal treaty that includes effective mechanisms to promote and facilitate compliance and share good practices.**

Recommendations on access to information

81. **The Government should ensure that its environmental report is published annually, in accordance with the law.**

82. **The Government should take steps to make environmental information more easily accessible by the public. In particular, as noted above, the public should be able to readily find information about water quality, both at the tap and in lakes and rivers.**

83. **Additional measures may be necessary to make environmental information accessible to those who are in particularly vulnerable situations or who are susceptible to environmental harm, including people living in poverty. Moreover, the Government should ensure that it disaggregates environmental and health data across dimensions such as geography, gender and age.**

84. **The Government should continue to carry out, and build on, its environmental training and information programmes, especially in rural or underserved areas.**

85. **The Government should ensure that the National Environmental Observatory receives adequate human and financial resources to develop, update and disseminate environmental information, including by strengthening coordination among the different agencies and departments with relevant information.**

86. **The Government should ensure that all proposals to carry out or approve projects that may have significant environmental effects are subject to careful, thorough assessment of their environmental impacts, including in particular the impacts that may interfere with the full enjoyment of human rights, such as the rights to life and health. The assessment should be undertaken as early as possible in the decision-making process, provide meaningful opportunities for the public to participate, and address all potential environmental impacts, including transboundary effects and cumulative effects that may occur as a result of the interaction of the proposal with other activities. The assessment should result in a public report that clearly describes the impacts, and the assessment and the final decision should be subject to review by a court or other independent body.**

Recommendations on public participation

87. **Uruguay should continue and build on its good practices with respect to public participation in the development of national plans and policies, by ensuring that the public has meaningful opportunities to participate in the development of the National Environment Plan for Sustainable Development. The Government should also, as appropriate, facilitate and take account of input from the National Human Rights Institution on the plan.**

88. **The Special Rapporteur urges the Government to rebuild a strong relationship with the members of local communities concerned about the impact of mining and other activities in the Quebrada de los Cuervos protected area. With a view to ensuring that the advisory commission is again able to perform its functions with full participation from the local stakeholders, the Government should take the steps necessary to demonstrate to the public that no potentially harmful activities will be allowed to go forward without adequate environmental impact assessment and safeguards to protect against environmental harm, including in particular harm to this protected area.**

89. **The Government should ensure that Decree No. 127/999, on the regulation of the public use of streets, is implemented in accordance with the obligations of Uruguay under international human rights law. In particular, it should not be interpreted to authorize measures that violate the rights to freedom of expression, association and peaceful assembly, including by punishing people for participating in peaceful demonstrations.**

Recommendations on access to effective remedies

90. **The Special Rapporteur encourages the Government to make its environmental communications procedures more transparent and responsive, by establishing an environmental ombudsperson, or an equivalent mechanism, with the mandate to receive all environmentally related complaints or inquiries from the public, to direct them to the appropriate office and to follow up to ensure that they receive responses in an appropriate, timely manner.**

91. **The Government should review the potential obstacles plaintiffs may face to bringing environmental cases to the courts, and take steps to ensure that they do not face unreasonable or excessive costs or other obstacles to bringing such cases.**

92. **The Government should ensure that the new Specialized Unit on the Environment has sufficient resources and the expertise to prosecute environmental violations.**

93. **Uruguay should proceed expeditiously to enact the proposed law on environmental crimes.**

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Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, in which he presents framework principles on human rights and the environment, addresses the human right to a safe, clean, healthy and sustainable environment and looks ahead to the next steps in the evolving relationship between human rights and the environment.

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Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

I. Introduction

1. The present report is the final report of the Special Rapporteur to the Human Rights Council. It presents framework principles on human rights and the environment, addresses the human right to a healthy environment and looks forward to the next steps in the evolving relationship between human rights and the environment.

2. The mandate was established in March 2012 by the Council in its resolution 19/10, in which it decided to appoint an independent expert with a mandate to study the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and to identify and promote best practices relating to the use of human rights obligations and commitments to inform, support and strengthen environmental policymaking. John H. Knox was appointed to the position in August 2012. In his first report, presented to the Council in March 2013, he emphasized that human rights and the environment are interdependent (A/HRC/22/43). A safe, clean, healthy and sustainable environment is necessary for the full enjoyment of a vast range of human rights, including the rights to life, health, food, water and development. At the same time, the exercise of human rights, including the rights to information, participation and remedy, is vital to the protection of the environment.

3. Over the first two years of the mandate, the Independent Expert sought to map the human rights obligations relating to the environment in more detail. He held a series of regional consultations around the world and, with the help of attorneys and academics working pro bono, reviewed hundreds of statements of treaty bodies, regional human rights tribunals, special procedure mandate holders and other human rights authorities that had applied human rights norms to environmental issues. He described the statements in 14 reports, each of which addressed one source or set of sources. He found that despite the diversity of the sources, their views on the relationship of human rights law and the environment were remarkably coherent. His second report, presented in March 2014, summarized these views (A/HRC/25/53). Virtually every source reviewed identified human rights whose enjoyment was infringed or threatened by environmental harm, and agreed that States had obligations under human rights law to protect against such harm. The obligations included procedural obligations (such as duties to provide information, facilitate participation and provide access to remedies), substantive obligations (including to regulate private actors) and heightened obligations to those in particularly vulnerable situations.

4. On the basis of his research and regional consultations, the Independent Expert also identified good practices in the use of these obligations, and in his next report to the Council, presented in March 2015, he described more than 100 such good practices (A/HRC/28/61). He published more detailed descriptions of each of the good practices on the website of the Office of the United Nations High Commissioner for Human Rights (OHCHR), and made them available in a searchable database at http://environmentalrightsdatabase.org/.

5. In March 2015, in its resolution 28/11, the Human Rights Council decided to extend the mandate of John H. Knox as a special rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment for a period of three years. The Council encouraged him to continue to study the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and to identify and promote good practices relating to those obligations. He has submitted reports on specific aspects of that relationship, including a report on climate change and human rights in 2016 (A/HRC/31/52), a report on biodiversity and human rights in 2017 (A/HRC/34/49), and a report on children's rights and the environment to the current session of the Council (A/HRC/37/58).

6. In resolution 28/11, the Council also encouraged the Special Rapporteur to promote and report on the realization of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, to disseminate his findings by continuing to give particular emphasis to practical solutions with regard to their implementation and to work on identifying challenges and obstacles to the full realization of such obligations. The Special Rapporteur presented a report in March 2016 with specific recommendations on implementation of the human rights obligations relating to the environment (A/HRC/31/53). In his second term, he has promoted implementation of the obligations in many ways, including by partnering with the United Nations Environment Programme on a series of judicial workshops on constitutional rights to a healthy environment, supporting the United Nations Institute for Training and Research in the development of an online course on human rights and the environment and working with the Universal Rights Group to develop a website for environmental human rights defenders, https://www.environment-rights.org/, as well as by undertaking country visits and receiving communications on violations.

II. Framework principles on human rights and the environment

7. To facilitate implementation of the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, the Special Rapporteur was urged to develop and disseminate guidance that clearly describes the relevant norms and is easy to understand and apply (see A/HRC/31/53, para. 69). In October 2017, the Special Rapporteur published draft guidelines on human rights and the environment and invited written comments. He also held a public consultation and an expert seminar, which included representatives of Governments, international organizations, civil society organizations and academics. He took into account the input received at the consultation and the seminar, as well as more than 50 written comments, in preparing the framework principles on human rights and the environment that are annexed to the present report.

8. The 16 framework principles set out basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment. Each framework principle has a commentary that elaborates on it and further clarifies its meaning. The framework principles and commentary do not create new obligations. Rather, they reflect the application of existing human rights obligations in the environmental context. As the Special Rapporteur stated in the mapping report (A/HRC/25/53), he understands that not all States have formally accepted all of these norms. While many of the obligations described in the framework principles and commentary are based directly on treaties or binding decisions from human rights tribunals, others draw on statements of human rights bodies that have the authority to interpret human rights law but not necessarily to issue binding decisions.[1]

9. The coherence of these interpretations, however, is strong evidence of the converging trends towards greater uniformity and certainty in the understanding of human rights obligations relating to the environment. These trends are further supported by State practice, including in international environmental instruments and before human rights bodies. As a result, the Special Rapporteur believes that States should accept the framework principles as a reflection of actual or emerging international human rights law. He is confident that, at a bare minimum, States will see them as best practices that they should move to adopt as expeditiously as possible.

[1] To avoid making the document too long and unwieldy, the framework principles and commentary do not cite all of the human rights sources on which they rely. A more complete list of sources is available on the OHCHR website. Although the framework principles and commentary do not attempt to restate obligations in areas other than human rights law, they do take into account relevant international environmental sources, such as the Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters (the Bali Guidelines), adopted by the Governing Council of the United Nations Environment Programme in 2010.

10. After consideration, the Special Rapporteur chose the name "framework principles" because he thought that it best reflected the nature of the document. The framework principles and commentary provide a sturdy basis for understanding and implementing human rights obligations relating to the environment, but they are in no sense the final word. The relationship between human rights and the environment has countless facets, and our understanding of it will continue to grow for many years to come. These framework principles do not purport to describe all of the human rights obligations that can be brought to bear on environmental issues today, much less attempt to predict those that may evolve in the future. The goal is simply to describe the main human rights obligations that apply in the environmental context, in order to facilitate their practical implementation and further development. To that end, the Special Rapporteur urges States, international organizations and civil society organizations to disseminate and publicize the framework principles, and to take them into account in their own activities.

III. The human right to a safe, clean, healthy and sustainable environment

11. An unusual aspect of the development of human rights norms relating to the environment is that they have not relied primarily on the explicit recognition of a human right to a safe, clean, healthy and sustainable environment — or, more simply, a human right to a healthy environment. Although this right has been recognized, in various forms, in regional agreements and in most national constitutions, it has not been adopted in a human rights agreement of global application, and only one regional agreement, the African Charter on Human and Peoples' Rights, provides for its interpretation in decisions by a review body.

12. Treaty bodies, regional tribunals, special rapporteurs and other international human rights bodies have instead applied human rights law to environmental issues by "greening" existing human rights, including the rights to life and health. As the mapping report explained and the framework principles demonstrate, this process has been quite successful, creating an extensive jurisprudence on human rights and the environment. In retrospect, this development is not as surprising as it may have seemed when it first began, over two decades ago. Environmental harm interferes with the full enjoyment of a wide spectrum of human rights, and the obligations of States to respect human rights, to protect human rights from interference and to fulfil human rights apply in the environmental context no less than in any other.

13. Explicit recognition of the human right to a healthy environment thus turned out to be unnecessary for the application of human rights norms to environmental issues. At the same time, it is significant that the great majority of the countries in the world have recognized the right at the national or regional level, or both. Based on the experience of the countries that have adopted constitutional rights to a healthy environment, recognition of the right has proved to have real advantages. It has raised the profile and importance of environmental protection and provided a basis for the enactment of stronger environmental laws. When applied by the judiciary, it has helped to provide a safety net to protect against gaps in statutory laws and created opportunities for better access to justice. Courts in many countries are increasingly applying the right, as is illustrated by the interest in the regional judicial workshops held by the United Nations Environment Programme and the Special Rapporteur.

14. On the basis of this experience, the Special Rapporteur recommends that the Human Rights Council consider supporting the recognition of the right in a global instrument. A model could be the rights to water and sanitation, which, like the right to a healthy environment, are not explicitly recognized in United Nations human rights treaties but are clearly necessary to the full enjoyment of human rights. In 2010, in its resolution 64/292, the General Assembly recognized "the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights". The

General Assembly could adopt a similar resolution that recognizes the right to a safe, clean, healthy and sustainable environment, another right that is essential for the full enjoyment of life and all human rights.[2]

15. States may be understandably reluctant to recognize a "new" human right if its content is uncertain. To be sure that a right will be taken seriously, it is important to be clear about its implications. The Special Rapporteur notes that one of the primary goals of his work on the mandate has been to clarify what human rights law requires with respect to environmental protection, including through the mapping project and these framework principles. As a result, the "human right to a healthy environment" is not an empty vessel waiting to be filled; on the contrary, its content has already been clarified, through recognition by human rights authorities that a safe, clean, healthy and sustainable environment is necessary for the full enjoyment of the human rights to life, health, food, water, housing and so forth. Here, too, the right is similar to the rights to water and sanitation, whose content had been addressed in detail by the Committee on Economic, Social and Cultural Rights and Catarina de Albuquerque, the first Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, before the General Assembly acted in 2010.

16. Even without formal recognition, the term "the human right to a healthy environment" is already being used to refer to the environmental aspects of the entire range of human rights that depend on a safe, clean, healthy and sustainable environment. The use of the term in this way — and, for that matter, the adoption of a resolution recognizing the right — does not change the legal content of obligations that are based on existing human rights law. Nevertheless, it has real advantages. It raises awareness that human rights norms require protection of the environment and highlights that environmental protection is on the same level of importance as other human interests that are fundamental to human dignity, equality and freedom. It also helps to ensure that human rights norms relating to the environment continue to develop in a coherent and integrated manner. Recognition of the right in a General Assembly resolution would further strengthen all of these benefits.

IV. Looking forward

17. Although the relationship of human rights and the environment has evolved rapidly over the past two decades, and even more so over the past five years, much remains to be done to clarify and implement the human rights obligations relating to a safe, clean, healthy and sustainable environment. The Special Rapporteur encourages the Human Rights Council to continue to be actively involved in the development of this relationship, including by renewing the mandate.

18. For example, more work is necessary to clarify how human rights norms relating to the environment apply to specific areas, including issues of gender and other types of discrimination, the responsibilities of businesses in relation to human rights and the environment, the effects of armed conflict on human rights and the environment, and obligations of international cooperation in relation to multinational corporations and transboundary harm.

19. More work, too, can be done to institutionalize support for capacity-building, including by instituting an annual forum on human rights and environmental issues; holding conferences for national human rights institutions on environmental matters; continuing to hold judicial workshops on human rights and the environment; instituting similar workshops for officials at environmental, mining and other agencies; strengthening

[2] A resolution by the General Assembly is not the only possible instrument through which a right to a healthy environment could be formally recognized. The Special Rapporteur notes that at the seventy-second session of the General Assembly, the Government of France presented for consideration a Global Pact for the Environment, article 1 of which indicates that "Every person has the right to live in an ecologically sound environment adequate for their health, well-being, dignity, culture and fulfilment". However, a resolution may be adopted more quickly and easily than an international agreement.

accountability mechanisms for human rights violations in connection with conservation activities; and mainstreaming human rights into the work of international institutions working on development and environmental issues. In this last respect, the Special Rapporteur applauds the recent announcement by the United Nations Environment Programme of a new "environmental rights initiative", designed in part to support environmental human rights defenders. He encourages OHCHR and the United Nations Environment Programme to continue to build on their partnership.

20. As Victor Hugo famously said, it is impossible to resist an idea whose time has come. The interdependence of human rights and the environment is an idea whose time is here. Over the past five years, the Special Rapporteur has made over 50 trips, to approximately 25 countries. Everywhere he has gone, he has met people who are bringing human rights to bear on environmental threats, often at great personal risk. From attorneys in Mexico to park rangers in Mongolia, from professors in China to community activists in Madagascar, from a mother who founded an environmental organization in Kenya to conservationists in Sweden to judges in Costa Rica, from indigenous leaders in Brazil to climate negotiators in Paris to international civil servants in Geneva and Nairobi, people in every country are striving for a world in which everyone can enjoy the human rights that depend upon a safe, clean, healthy and sustainable environment. It has been a great honour to support them in their efforts.

Annex

Framework principles on human rights and the environment

1. Human beings are part of nature, and our human rights are intertwined with the environment in which we live. Environmental harm interferes with the enjoyment of human rights, and the exercise of human rights helps to protect the environment and to promote sustainable development.

2. The framework principles on human rights and the environment summarize the main human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. They provide integrated and detailed guidance for practical implementation of these obligations, and a basis for their further development as our understanding of the relationship of human rights and the environment continues to evolve.

3. The framework principles are not exhaustive: many national and international norms are relevant to human rights and environmental protection, and nothing in the framework principles should be interpreted as limiting or undermining standards that provide higher levels of protection under national or international law.

Framework principle 1

States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights.

Framework principle 2

States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment.

Commentary on framework principles 1 and 2

4. Human rights and environmental protection are interdependent. A safe, clean, healthy and sustainable environment is necessary for the full enjoyment of human rights, including the rights to life, to the highest attainable standard of physical and mental health, to an adequate standard of living, to adequate food, to safe drinking water and sanitation, to housing, to participation in cultural life and to development, as well as the right to a healthy environment itself, which is recognized in regional agreements and most national constitutions.[1] At the same time, the exercise of human rights, including rights to freedom of expression and association, to education and information, and to participation and effective remedies, is vital to the protection of the environment.

5. The obligations of States to respect human rights, to protect the enjoyment of human rights from harmful interference,[2] and to fulfil human rights by working towards their full realization[3] all apply in the environmental context. States should therefore refrain from violating human rights through causing or allowing environmental harm; protect against harmful environmental interference from other sources, including business enterprises,

[1] See Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, art. 1; African Charter on Human and Peoples' Rights, art. 24; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, art. 11; Arab Charter on Human Rights, art. 38; and ASEAN Human Rights Declaration, art. 28. More than 100 States have recognized the right at the national level.

[2] See, for example, Human Rights Committee, general comment No. 6 (1982) on the right to life, para. 5.

[3] See, for example, Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health, para. 33.

other private actors and natural causes; and take effective steps to ensure the conservation and sustainable use of the ecosystems and biological diversity on which the full enjoyment of human rights depends. While it may not always be possible to prevent all environmental harm that interferes with the full enjoyment of human rights, States should undertake due diligence to prevent such harm and reduce it to the extent possible, and provide for remedies for any remaining harm.

6. At the same time, States must fully comply with their obligations in respect of human rights, such as freedom of expression, that are exercised in relation to the environment. Such obligations not only have independent bases in human rights law; they are also required in order to respect, protect and fulfil the human rights whose enjoyment depends on a safe, clean, healthy and sustainable environment.

Framework principle 3

States should prohibit discrimination and ensure equal and effective protection against discrimination in relation to the enjoyment of a safe, clean, healthy and sustainable environment.

Commentary

7. The obligations of States to prohibit discrimination and to ensure equal and effective protection against discrimination[4] apply to the equal enjoyment of human rights relating to a safe, clean, healthy and sustainable environment. States therefore have obligations, among others, to protect against environmental harm that results from or contributes to discrimination, to provide for equal access to environmental benefits and to ensure that their actions relating to the environment do not themselves discriminate.

8. Discrimination may be direct, when someone is treated less favourably than another person in a similar situation for a reason related to a prohibited ground, or indirect, when facially neutral laws, policies or practices have a disproportionate impact on the exercise of human rights as distinguished by prohibited grounds of discrimination.[5] In the environmental context, direct discrimination may include, for example, failing to ensure that members of disfavoured groups have the same access as others to information about environmental matters, to participation in environmental decision-making, or to remedies for environmental harm (framework principles 7, 9 and 10). In the case of transboundary environmental harm, States should provide for equal access to information, participation and remedies without discriminating on the basis of nationality or domicile.

9. Indirect discrimination may arise, for example, when measures that adversely affect ecosystems, such as mining and logging concessions, have disproportionately severe effects on communities that rely on the ecosystems. Indirect discrimination can also include measures such as authorizing toxic and hazardous facilities in large numbers in communities that are predominantly composed of racial or other minorities, thereby disproportionately interfering with their rights, including their rights to life, health, food and water. Like directly discriminatory measures, such indirect differential treatment is

[4] For example, International Covenant on Civil and Political Rights, arts. 2 (1) and 26; International Covenant on Economic, Social and Cultural Rights, art. 2 (2); International Convention on the Elimination of All Forms of Racial Discrimination, arts. 2 and 5; Convention on the Elimination of All Forms of Discrimination against Women, art. 2; Convention on the Rights of the Child, art. 2; Convention on the Rights of Persons with Disabilities, art. 5. The term "discrimination" here refers to any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms. Human Rights Committee, general comment No. 18 (1989) on non-discrimination, para. 7.

[5] See Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 10.

prohibited unless it meets strict requirements of legitimacy, necessity and proportionality.[6] More generally, to address indirect as well as direct discrimination, States must pay attention to historical or persistent prejudice against groups of individuals, recognize that environmental harm can both result from and reinforce existing patterns of discrimination, and take effective measures against the underlying conditions that cause or help to perpetuate discrimination.[7] In addition to complying with their obligations of non-discrimination, States should take additional measures to protect those who are most vulnerable to, or at particular risk from, environmental harm (framework principles 14 and 15).

Framework principle 4

States should provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence.

Commentary

10. Human rights defenders include individuals and groups who strive to protect and promote human rights relating to the environment (see A/71/281, para. 7). Those who work to protect the environment on which the enjoyment of human rights depends are protecting and promoting human rights as well, whether or not they self-identify as human rights defenders. They are among the human rights defenders most at risk, and the risks are particularly acute for indigenous peoples and traditional communities that depend on the natural environment for their subsistence and culture.

11. Like other human rights defenders, environmental human rights defenders are entitled to all of the rights and protections set out in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders), including the right to be protected in their work and the right to strive for the protection and realization of human rights at the national and international levels. To that end, States must provide a safe and enabling environment for defenders to operate free from threats, harassment, intimidation and violence. The requirements for such an environment include that States: adopt and implement laws that protect human rights defenders in accordance with international human rights standards;[8] publicly recognize the contributions of human rights defenders to society and ensure that their work is not criminalized or stigmatized; develop, in consultation with human rights defenders, effective programmes for protection and early warning; provide appropriate training for security and law enforcement officials; ensure the prompt and impartial investigation of threats and violations and the prosecution of alleged perpetrators; and provide for effective remedies for violations, including appropriate compensation (see A/71/281, A/66/203 and A/HRC/25/55, paras. 54–133).

[6] Ibid., para. 13.

[7] Ibid., para. 8.

[8] See Model Law for the Recognition and Protection of Human Rights Defenders, at www.ishr.ch/sites/default/files/documents/model_law_full_digital_updated_15june2016.pdf.

Framework principle 5

States should respect and protect the rights to freedom of expression, association and peaceful assembly in relation to environmental matters.

Commentary

12. The obligations of States to respect and protect the rights to freedom of expression, association and peaceful assembly[9] encompass the exercise of those rights in relation to environmental matters. States must ensure that these rights are protected whether they are being exercised within structured decision-making procedures or in other forums, such as the news or social media, and whether or not they are being exercised in opposition to policies or projects favoured by the State.

13. Restrictions on the exercise of these rights are permitted only if they are provided by law and necessary in a democratic society to protect the rights of others, or to protect national security, public order, or public health or morals. These restrictions must be narrowly tailored to avoid undermining the rights. For example, blanket prohibitions on protests surrounding the operations of mining, forestry or other resource extraction companies are unjustifiable (see A/HRC/29/25, para. 22). States may never respond to the exercise of these rights with excessive or indiscriminate use of force, arbitrary arrest or detention, torture or other cruel, inhuman or degrading treatment or punishment, enforced disappearance, the misuse of criminal laws, stigmatization or the threats of such acts. States should never hinder the access of individuals or associations to international bodies, or their right to seek, receive and use resources from foreign as well as domestic sources.[10] When violence occurs in an otherwise peaceful assembly or protest, States have a duty to distinguish between peaceful and non-peaceful demonstrators, take measures to de-escalate tensions and hold the violent individuals — not the organizers — to account for their actions. The potential for violence is not an excuse to interfere with or disperse otherwise peaceful assemblies (see A/HRC/29/25, para. 41).

14. States must also protect the exercise of these rights from interference by businesses and other private actors. States must ensure that civil laws relating to defamation and libel are not misused to repress the exercise of these rights. States should protect against the repression of legitimate advocacy by private security enterprises, and States may not cede their own law enforcement responsibilities to such enterprises or other private actors.

Framework principle 6

States should provide for education and public awareness on environmental matters.

Commentary

15. States have agreed that the education of the child shall be directed to, among other things, the development of respect for human rights and the natural environment.[11] Environmental education should begin early and continue throughout the educational process. It should increase students' understanding of the close relationship between humans and nature, help them to appreciate and enjoy the natural world and strengthen their capacity to respond to environmental challenges.

16. Increasing the public awareness of environmental matters should continue into adulthood. To ensure that adults as well as children understand environmental effects on their health and well-being, States should make the public aware of the specific environmental risks that affect them and how they may protect themselves from those risks.

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[9] See Universal Declaration of Human Rights, arts. 19–20; International Covenant on Civil and Political Rights, arts. 19 and 21–22.

[10] See Declaration on Human Rights Defenders, arts. 9 (4) and 13.

[11] See Convention on the Rights of the Child, art. 29.

As part of increasing public awareness, States should build the capacity of the public to understand environmental challenges and policies, so that they may fully exercise their rights to express their views on environmental issues (framework principle 5), understand environmental information, including assessments of environmental impacts (framework principles 7 and 8), participate in decision-making (framework principle 9) and, where appropriate, seek remedies for violations of their rights (framework principle 10). States should tailor environmental education and public awareness programmes to the culture, language and environmental situation of particular populations.

Framework principle 7

States should provide public access to environmental information by collecting and disseminating information and by providing affordable, effective and timely access to information to any person upon request.

Commentary

17. The human right of all persons to seek, receive and impart information[12] includes information on environmental matters. Public access to environmental information enables individuals to understand how environmental harm may undermine their rights, including the rights to life and health, and supports their exercise of other rights, including the rights to expression, association, participation and remedy.

18. Access to environmental information has two dimensions. First, States should regularly collect, update and disseminate environmental information, including information about: the quality of the environment, including air and water; pollution, waste, chemicals and other potentially harmful substances introduced into the environment; threatened and actual environmental impacts on human health and well-being; and relevant laws and policies. In particular, in situations involving imminent threat of harm to human health or the environment, States must ensure that all information that would enable the public to take protective measures is disseminated immediately to all affected persons, regardless of whether the threats have natural or human causes.

19. Second, States should provide affordable, effective and timely access to environmental information held by public authorities, upon the request of any person or association, without the need to show a legal or other interest. Grounds for refusal of a request should be set out clearly and construed narrowly, in light of the public interest in favour of disclosure. States should also provide guidance to the public on how to obtain environmental information.

Framework principle 8

To avoid undertaking or authorizing actions with environmental impacts that interfere with the full enjoyment of human rights, States should require the prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of human rights.

Commentary

20. Prior assessment of the possible environmental impacts of proposed projects and policies is generally required by national laws, and the elements of effective environmental assessment are widely understood: the assessment should be undertaken as early as possible in the decision-making process for any proposal that is likely to have significant effects on the environment; the assessment should provide meaningful opportunities for the public to participate, should consider alternatives to the proposal, and should address all potential

[12] See Universal Declaration of Human Rights, art. 19; International Covenant on Civil and Political Rights, art. 19.

environmental impacts, including transboundary effects and cumulative effects that may occur as a result of the interaction of the proposal with other activities; the assessment should result in a written report that clearly describes the impacts; and the assessment and the final decision should be subject to review by an independent body. The procedure should also provide for monitoring of the proposal as implemented, to assess its actual impacts and the effectiveness of protective measures.[13]

21. To protect against interference with the full enjoyment of human rights, the assessment of environmental impacts should also examine the possible effects of the environmental impacts of proposed projects and policies on the enjoyment of all relevant rights, including the rights to life, health, food, water, housing and culture. As part of that assessment, the procedure should examine whether the proposal will comply with obligations of non-discrimination (framework principle 3), applicable domestic laws and international agreements (framework principles 11 and 13) and the obligations owed to those who are particularly vulnerable to environmental harm (framework principles 14 and 15). The assessment procedure itself must comply with human rights obligations, including by providing public information about the assessment and making the assessment and the final decision publicly available (framework principle 7), facilitating public participation by those who may be affected by the proposed action (framework principle 9), and providing for effective legal remedies (framework principle 10).

22. Business enterprises should conduct human rights impact assessments in accordance with the Guiding Principles on Business and Human Rights, which provide that businesses "should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships", include "meaningful consultation with potentially affected groups and other relevant stakeholders", "integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action" (see Guiding Principles 18–19).

Framework principle 9

States should provide for and facilitate public participation in decision-making related to the environment, and take the views of the public into account in the decision-making process.

Commentary

23. The right of everyone to take part in the government of their country and in the conduct of public affairs[14] includes participation in decision-making related to the environment. Such decision-making includes the development of policies, laws, regulations, projects and activities. Ensuring that these environmental decisions take into account the views of those who are affected by them increases public support, promotes sustainable development and helps to protect the enjoyment of rights that depend on a safe, clean, healthy and sustainable environment.

24. To be effective, public participation must be open to all members of the public who may be affected and occur early in the decision-making process. States should provide for the prior assessment of the impacts of proposals that may significantly affect the environment, and ensure that all relevant information about the proposal and the decision-making process is made available to the affected public in an objective, understandable, timely and effective manner (see framework principles 7 and 8).

25. With respect to the development of policies, laws and regulations, drafts should be publicly available and the public should be given opportunities to comment directly or

[13] United Nations Environment Programme, *Environmental Impact Assessment and Strategic Environmental Assessment: Towards an Integrated Approach* (2004), p. 42.

[14] See Universal Declaration of Human Rights, art. 21; International Covenant on Civil and Political Rights, art. 25.

through representative bodies. With respect to proposals for specific projects or activities, States should inform the affected public of their opportunities to participate at an early stage of the decision-making process and provide them with relevant information, including information about: the proposed project or activity and its possible impacts on human rights and the environment; the range of possible decisions; and the decision-making procedure to be followed, including the time schedule for comments and questions and the time and place of any public hearings.

26. States must provide members of the public with an adequate opportunity to express their views, and take additional steps to facilitate the participation of women and of members of marginalized communities (framework principle 14). States must ensure that the relevant authorities take into account the expressed views of the public in making their final decisions, that they explain the justifications for the decisions and that the decisions and explanations are made public.

Framework principle 10

States should provide for access to effective remedies for violations of human rights and domestic laws relating to the environment.

Commentary

27. The obligations of States to provide for access to judicial and other procedures for effective remedies for violations of human rights[15] encompass remedies for violations of human rights relating to the environment. States must therefore provide for effective remedies for violations of the obligations set out in these framework principles, including those relating to the rights of freedom of expression, association and peaceful assembly (framework principle 5), access to environmental information (framework principle 7) and public participation in environmental decision-making (framework principle 9).

28. In addition, in connection with the obligations to establish, maintain and enforce substantive environmental standards (framework principles 11 and 12), each State should ensure that individuals have access to effective remedies against private actors, as well as government authorities, for failures to comply with the laws of the State relating to the environment.

29. To provide for effective remedies, States should ensure that individuals have access to judicial and administrative procedures that meet basic requirements, including that the procedures: (a) are impartial, independent, affordable, transparent and fair; (b) review claims in a timely manner; (c) have the necessary expertise and resources; (d) incorporate a right of appeal to a higher body; and (e) issue binding decisions, including for interim measures, compensation, restitution and reparation, as necessary to provide effective remedies for violations. The procedures should be available for claims of imminent and foreseeable as well as past and current violations. States should ensure that decisions are made public and that they are promptly and effectively enforced.

30. States should provide guidance to the public about how to seek access to these procedures, and should help to overcome obstacles to access such as language, illiteracy, expense and distance. Standing should be construed broadly, and States should recognize the standing of indigenous peoples and other communal landowners to bring claims for violations of their collective rights. All those pursuing remedies must be protected against reprisals, including threats and violence. States should protect against baseless lawsuits aimed at intimidating victims and discouraging them from pursuing remedies.

[15] See, for example, Universal Declaration of Human Rights, art. 8; International Covenant on Civil and Political Rights, art. 2 (3).

Framework principle 11

States should establish and maintain substantive environmental standards that are non-discriminatory, non-retrogressive and otherwise respect, protect and fulfil human rights.

Commentary

31. To protect against environmental harm and to take necessary measures for the full realization of human rights that depend on the environment, States must establish, maintain and enforce effective legal and institutional frameworks for the enjoyment of a safe, clean, healthy and sustainable environment. Such frameworks should include substantive environmental standards, including with respect to air quality, the global climate, freshwater quality, marine pollution, waste, toxic substances, protected areas, conservation and biological diversity.

32. Ideally, environmental standards would be set and implemented at levels that would prevent all environmental harm from human sources and ensure a safe, clean, healthy and sustainable environment. However, limited resources may prevent the immediate realization of the rights to health, food, water and other economic, social and cultural rights. The obligation of States to achieve progressively the full realization of these rights by all appropriate means[16] requires States to take deliberate, concrete and targeted measures towards that goal, but States have some discretion in deciding which means are appropriate in light of available resources.[17] Similarly, human rights bodies applying civil and political rights, such as the rights to life and to private and family life, have held that States have some discretion to determine appropriate levels of environmental protection, taking into account the need to balance the goal of preventing all environmental harm with other social goals.[18]

33. This discretion is not unlimited. One constraint is that decisions as to the establishment and implementation of appropriate levels of environmental protection must always comply with obligations of non-discrimination (framework principle 3). Another constraint is the strong presumption against retrogressive measures in relation to the progressive realization of economic, social and cultural rights.[19] Other factors that should be taken into account in assessing whether environmental standards otherwise respect, promote and fulfil human rights include the following:

(a) The standards should result from a procedure that itself complies with human rights obligations, including those relating to the rights of freedom of expression, freedom of association and peaceful assembly, information, participation and remedy (framework principles 4–10);

(b) The standard should take into account and, to the extent possible, be consistent with all relevant international environmental, health and safety standards, such as those promulgated by the World Health Organization;

(c) The standard should take into account the best available science. However, the lack of full scientific certainty should not be used to justify postponing effective and proportionate measures to prevent environmental harm, especially when there are threats of serious or irreversible damage.[20] States should take precautionary measures to protect against such harm;

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[16] See International Covenant on Economic, Social and Cultural Rights, art. 2 (1).

[17] See Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties' obligations.

[18] See, for example, European Court of Human Rights, *Hatton and others v. United Kingdom* (application No. 36022/97), judgment of 8 July 2003, para. 98. See also Rio Declaration on Environment and Development, principle 11.

[19] See Committee on Economic, Social and Cultural Rights, general comment No. 3, para. 9.

[20] See Rio Declaration on Environment and Development, principle 15.

(d) The standard must comply with all relevant human rights obligations. For example, in all actions concerning children, the best interests of the child must be a primary consideration;[21]

(e) Finally, the standard must not strike an unjustifiable or unreasonable balance between environmental protection and other social goals, in light of its effects on the full enjoyment of human rights.[22]

Framework principle 12

States should ensure the effective enforcement of their environmental standards against public and private actors.

Commentary

34. Governmental authorities must comply with the relevant environmental standards in their own operations, and they must also monitor and effectively enforce compliance with the standards by preventing, investigating, punishing and redressing violations of the standards by private actors as well as governmental authorities. In particular, States must regulate business enterprises to protect against human rights abuses resulting from environmental harm and to provide for remedies for such abuses. States should implement training programmes for law enforcement and judicial officers to enable them to understand and enforce environmental laws, and they should take effective steps to prevent corruption from undermining the implementation and enforcement of environmental laws.

35. In accordance with the Guiding Principles on Business and Human Rights, the responsibility of business enterprises to respect human rights includes the responsibility to avoid causing or contributing to adverse human rights impacts through environmental harm, to address such impacts when they occur and to seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships. Businesses should comply with all applicable environmental laws, issue clear policy commitments to meet their responsibility to respect human rights through environmental protection, implement human rights due diligence processes (including human rights impact assessments) to identify, prevent, mitigate and account for how they address their environmental impacts on human rights, and enable the remediation of any adverse environmental human rights impacts they cause or to which they contribute.

Framework principle 13

States should cooperate with each other to establish, maintain and enforce effective international legal frameworks in order to prevent, reduce and remedy transboundary and global environmental harm that interferes with the full enjoyment of human rights.

Commentary

36. The obligation of States to cooperate to achieve universal respect for, and observance of, human rights[23] requires States to work together to address transboundary and global threats to human rights. Transboundary and global environmental harm can have severe effects on the full enjoyment of human rights, and international cooperation is

[21] See Convention on the Rights of the Child, art. 3 (1).

[22] For example, a decision to allow massive oil pollution in the pursuit of economic development could not be considered reasonable in light of its disastrous effects on the enjoyment of the rights to life, health, food and water. See African Commission on Human and Peoples' Rights, *Social and Economic Rights Action Centre and Centre for Economic and Social Rights v. Nigeria*, communication No. 155/96 (2001).

[23] See Charter of the United Nations, arts. 55–56; International Covenant on Economic, Social and Cultural Rights, art. 2 (1).

necessary to address such harm. States have entered into agreements on many international environmental problems, including climate change, ozone depletion, transboundary air pollution, marine pollution, desertification and the conservation of biodiversity.

37. The obligation of international cooperation does not require every State to take exactly the same actions. The responsibilities that are necessary and appropriate for each State will depend in part on its situation, and agreements between States may appropriately tailor their commitments to take account of their respective capabilities and challenges. Multilateral environmental agreements often include different requirements for States in different economic situations, and provide for technical and financial assistance from developed States to other States.

38. Once their obligations have been defined, however, States must comply with them in good faith. No State should ever seek to withdraw from any of its international obligations to protect against transboundary or global environmental harm. States should continually monitor whether their existing international obligations are sufficient. When those obligations and commitments prove to be inadequate, States should quickly take the necessary steps to strengthen them, bearing in mind that the lack of full scientific certainty should not be used to justify postponing effective and proportionate measures to ensure a safe, clean, healthy and sustainable environment.

39. States must also comply with their human rights obligations relating to the environment in the context of other international legal frameworks, such as agreements for economic cooperation and international finance mechanisms. For example, they should ensure that agreements facilitating international trade and investment support, rather than hinder, the ability of States to respect, protect and fulfil human rights and to ensure a safe, clean, healthy and sustainable environment. International financial institutions, as well as State agencies that provide international assistance, should adopt and implement environmental and social safeguards that are consistent with human rights obligations, including by: (a) requiring the environmental and social assessment of every proposed project and programme; (b) providing for effective public participation; (c) providing for effective procedures to enable those who may be harmed to pursue remedies; (d) requiring legal and institutional protections against environmental and social risks; and (e) including specific protections for indigenous peoples and those in vulnerable situations.

Framework principle 14

States should take additional measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities.

Commentary

40. As the Human Rights Council has recognized, while the human rights implications of environmental damage are felt by individuals and communities around the world, the consequences are felt most acutely by those segments of the population that are already in vulnerable situations.[24] Persons may be vulnerable because they are unusually susceptible to certain types of environmental harm, or because they are denied their human rights, or both. Vulnerability to environmental harm reflects the "interface between exposure to the physical threats to human well-being and the capacity of people and communities to cope with those threats".[25]

41. Those who are at greater risk from environmental harm for either or both reasons often include women, children, persons living in poverty, members of indigenous peoples and traditional communities, older persons, persons with disabilities, ethnic, racial or other

[24] See Human Rights Council resolution 34/20.

[25] United Nations Environment Programme, *Global Environment Outlook 3* (2002), p. 302.

minorities and displaced persons.[26] The many examples of potential vulnerability include the following:

(a) In most households, women are primarily responsible for water and hygiene. When sources of water are polluted, they are at greater risk of exposure, and if they travel longer distances to find safer sources, they are at greater risk of assault (see A/HRC/33/49). Nevertheless, they are typically excluded from decision-making procedures on water and sanitation;

(b) Children are vulnerable for many reasons, including that they are developing physically and that they are less resistant to many types of environmental harm. Of the approximately 6 million deaths of children under the age of 5 in 2015, more than 1.5 million could have been prevented through the reduction of environmental risks. Moreover, exposure to pollution and other environmental harms in childhood can have lifelong consequences, including by increasing the likelihood of cancer and other diseases (see A/HRC/37/58);

(c) Persons living in poverty often lack adequate access to safe water and sanitation, and they are more likely to burn wood, coal and other solid fuels for heating and cooking, causing household air pollution;

(d) Indigenous peoples and other traditional communities that rely on their ancestral territories for their material and cultural existence face increasing pressure from Governments and business enterprises seeking to exploit their resources. They are usually marginalized from decision-making processes and their rights are often ignored or violated;

(e) Older persons may be vulnerable to environmental harm because they are more susceptible to heat, pollutants and vector-borne diseases, among other factors;

(f) The vulnerability of persons with disabilities to natural disasters and extreme weather is often exacerbated by barriers to receiving emergency information in an accessible format, and to accessing means of transport, shelter and relief;

(g) Because racial, ethnic and other minorities are often marginalized and lack political power, their communities often become the sites of disproportionate numbers of waste dumps, refineries, power plants and other polluting facilities, exposing them to higher levels of air pollution and other types of environmental harm;

(h) Natural disasters and other types of environmental harm often cause internal displacement and transboundary migration, which can exacerbate vulnerabilities and lead to additional human rights violations and abuses (see A/66/285 and A/67/299).

42. To protect the rights of those who are particularly vulnerable to or at risk from environmental harm, States should ensure that their laws and policies take into account the ways that some parts of the population are more susceptible to environmental harm, and the barriers some face to exercising their human rights related to the environment.

43. For example, States should develop disaggregated data on the specific effects of environmental harm on different segments of the population, conducting additional research as necessary, to provide a basis for ensuring that their laws and policies adequately protect against such harm. States should take effective measures to raise the awareness of environmental threats among those persons who are most at risk. In monitoring and reporting on environmental issues, States should provide detailed information on the threats to, and status of, the most vulnerable. Assessments of the environmental and human rights impacts of proposed projects and policies must include a careful examination of the impacts on the most vulnerable, in particular. In the case of indigenous peoples and local communities, assessments should be in accord with the guidelines adopted by the Conference of Parties to the Convention on Biological Diversity.[27]

[26] Many persons are vulnerable and subject to discrimination along more than one dimension, such as children living in poverty or indigenous women.

[27] The Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on,

44. States should develop environmental education, awareness and information programmes to overcome obstacles such as illiteracy, minority languages, distance from government agencies and limited access to information technology, in order to ensure that everyone has effective access to such programmes and to environmental information in forms that are understandable to them. States should also take steps to ensure the equitable and effective participation of all affected segments of the population in relevant decision-making, taking into account the characteristics of the vulnerable or marginalized populations concerned.

45. States should ensure that their legal and institutional frameworks for environmental protection effectively protect those who are in vulnerable situations. They must comply with their obligations of non-discrimination (framework principle 3), as well as any other obligations relevant to specific groups. For example, any environmental policies or measures that may affect children's rights must ensure that the best interests of children are a primary consideration.[28]

46. In developing and implementing international environmental agreements, States should include strategies and programmes to identify and protect those vulnerable to the threats addressed in the agreements.[29] Domestic and international environmental standards should be set at levels that protect against harm to vulnerable segments of the population, and States should use appropriate indicators and benchmarks to assess implementation. When measures to safeguard against or mitigate adverse impacts are impossible or ineffective, States must facilitate access to effective remedies for violations and abuses of the rights of those most vulnerable to environmental harm.

Framework principle 15

States should ensure that they comply with their obligations to indigenous peoples and members of traditional communities, including by:

(a) **Recognizing and protecting their rights to the lands, territories and resources that they have traditionally owned, occupied or used;**

(b) **Consulting with them and obtaining their free, prior and informed consent before relocating them or taking or approving any other measures that may affect their lands, territories or resources;**

(c) **Respecting and protecting their traditional knowledge and practices in relation to the conservation and sustainable use of their lands, territories and resources;**

(d) **Ensuring that they fairly and equitably share the benefits from activities relating to their lands, territories or resources.**

Commentary

47. Indigenous peoples are particularly vulnerable to environmental harm because of their close relationship with the natural ecosystems on their ancestral territories. The United Nations Declaration on the Rights of Indigenous Peoples and the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), as well as other human rights and conservation agreements, set out obligations of States in relation to the rights of indigenous peoples. Those obligations include, but are not limited to, the four highlighted here, which have particular relevance to the human rights of indigenous peoples in relation to the environment.

Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities.

[28] See Convention on the Rights of the Child, art. 3 (1).

[29] See, for example, Minamata Convention on Mercury, art. 16 (1) (a), annex C.

48. Traditional (sometimes called "local") communities that do not self-identify as indigenous may also have close relationships to their ancestral territories and depend directly on nature for their material needs and cultural life. Examples include the descendants of Africans brought to Latin America as slaves, who escaped and formed tribal communities. To protect the human rights of the members of such traditional communities, States owe them obligations as well. While those obligations are not always identical to those owed to indigenous peoples, they should include the obligations described below (see A/HRC/34/49, paras. 52–58).

49. First, States must recognize and protect the rights of indigenous peoples and traditional communities to the lands, territories and resources that they have traditionally owned, occupied or used, including those to which they have had access for their subsistence and traditional activities.[30] The recognition of the rights must be conducted with due respect for the customs, traditions and land tenure systems of the peoples or communities concerned.[31] Even without formal recognition of property rights and delimitation and demarcation of boundaries, States must protect against actions that might affect the value, use or enjoyment of the lands, territories or resources, including by instituting adequate penalties against those who intrude on or use them without authorization.[32]

50. Second, States must ensure the full and effective participation of indigenous peoples and traditional communities in decision-making on the entire spectrum of matters that affect their lives. States have obligations to consult with them when considering legislative or administrative measures which may affect them directly, before undertaking or permitting any programmes for the exploration or exploitation of resources pertaining to their lands or territories and when considering their capacity to alienate their lands or territories or otherwise transfer their rights outside their own community.[33] States should assess the environmental and social impacts of proposed measures and ensure that all relevant information is provided to them in understandable and accessible forms (framework principles 7–8). Consultations with indigenous peoples and traditional communities should be in accordance with their customs and traditions, and occur early in the decision-making process (framework principle 9).

51. The free, prior and informed consent of indigenous peoples or traditional communities is generally necessary before the adoption or implementation of any laws, policies or measures that may affect them, and in particular before the approval of any project affecting their lands, territories or resources, including the extraction or exploitation of mineral, water or other resources, or the storage or disposal of hazardous materials.[34] Relocation of indigenous peoples or traditional communities may take place only with their free, prior and informed consent and after agreement on just and fair compensation and, where possible, with the option of return.[35]

52. Third, States should respect and protect the knowledge and practices of indigenous peoples and traditional communities in relation to the conservation and sustainable use of their lands, territories and resources.[36] Indigenous peoples and traditional communities have the right to the conservation and protection of the environment and the productive capacity of their lands, territories and resources, and to receive assistance from States for such

[30] See ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), arts. 14–15; United Nations Declaration on the Rights of Indigenous Peoples, arts. 26–27.

[31] See United Nations Declaration on the Rights of Indigenous Peoples, art. 26 (3).

[32] See ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 18.

[33] Ibid., arts. 6, 15 and 17.

[34] See United Nations Declaration on the Rights of Indigenous Peoples, arts. 19, 29 (2) and 32. See also Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity, arts. 6–7 (consent required for access to genetic resources and traditional knowledge).

[35] See ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 16; United Nations Declaration on the Rights of Indigenous Peoples, art. 10.

[36] See Convention on Biological Diversity, arts. 8 (j) and 10 (c).

conservation and protection.[37] States must comply with the obligations of consultation and consent with respect to the establishment of protected areas in the lands and territories of indigenous peoples and traditional communities, and ensure that they can participate fully and effectively in the governance of such protected areas.[38]

53. Fourth, States must ensure that indigenous peoples and traditional communities affected by extraction activities, the use of their traditional knowledge and genetic resources, or other activities in relation to their lands, territories or resources fairly and equitably share the benefits arising from such activities.[39] Consultation procedures should establish the benefits that the affected indigenous peoples and traditional communities are to receive, in a manner consistent with their own priorities. Finally, States must provide for effective remedies for violations of their rights (framework principle 10), and just and fair redress for harm resulting from any activities affecting their lands, territories or resources.[40] They have the right to restitution or, if this is not possible, just, fair and equitable compensation for their lands, territories and resources that have been taken, used or damaged without their free, prior and informed consent.[41]

Framework principle 16

States should respect, protect and fulfil human rights in the actions they take to address environmental challenges and pursue sustainable development.

Commentary

54. The obligations of States to respect, protect and fulfil human rights apply when States are adopting and implementing measures to address environmental challenges and to pursue sustainable development. That a State is attempting to prevent, reduce or remedy environmental harm, seeking to achieve one or more of the Sustainable Development Goals, or taking actions in response to climate change does not excuse it from complying with its human rights obligations.[42]

55. Pursuing environmental and development goals in accordance with human rights norms not only promotes human dignity, equality and freedom, the benefits of fulfilling all human rights. It also helps to inform and strengthen policymaking. Ensuring that those most affected can obtain information, freely express their views and participate in the decision-making process, for example, makes policies more legitimate, coherent, robust and sustainable. Most important, a human rights perspective helps to ensure that environmental and development policies improve the lives of the human beings who depend on a safe, clean, healthy and sustainable environment — which is to say, all human beings.

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[37] See United Nations Declaration on the Rights of Indigenous Peoples, art. 29 (1).

[38] See ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 15 (1).

[39] Ibid., art. 15 (2); Convention on Biological Diversity, art. 8 (j); Nagoya Protocol, art. 5; United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, art. 16 (g).

[40] See United Nations Declaration on the Rights of Indigenous Peoples, art. 32 (3).

[41] Ibid., art. 28.

[42] See Paris Agreement, eleventh preambular para.